STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

GTE Corporation and Bell Atlantic Corporation	:	
	:	
Joint application for the approval of a corporate reorganization involving a merger of GTE Corporation and Bell Atlantic Corporation.	:	**98-0866**

ORDER

October 29, 1999

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By the Commission:

I. PROCEDURAL HISTORY

On December 2, 1999, GTE Corporation ("GTE") and Bell Atlantic Corporation ("Bell Atlantic") (collectively, "Applicants" or "Joint Applicants") filed a joint application with the Illinois Commerce Commission ("Commission") pursuant to Section 7-204 of the Public Utilities Act ("Act") (220 ILCS 5/7-204) seeking approval of a corporate reorganization involving the parent company merger of GTE and Bell Atlantic.

Petitions to intervene in this proceeding were filed by Sprint Communications Company L.P., d/b/a Sprint Communications (" Sprint"); AT&T Communications of Illinois, Inc. ("AT&T"); MCI WorldCom, Inc.; SBC Communications, Inc.; Nextlink Illinois, Inc.; Illinois Bell Telephone Company ("Ameritech Illinois"); the People of the State of Illinois; the Cable Television & Communications Association of Illinois; the People of Cook County; L.R. Communications, Inc.; Local 51, International Brotherhood of Electrical Workers; the Telecommunications Resellers Association; and CoreComm Ltd. ("CoreComm"). These petitions to intervene were granted by the Hearing Examiners.

Pursuant to proper legal notice, a pre-hearing conference was held in this matter before duly authorized Hearing Examiners of the Commission at its offices in Springfield, Illinois on December 21, 1998. Thereafter, evidentiary hearings were held on June 28-30, 1999. Appearances were entered at the evidentiary hearings by counsel on behalf of Applicants, AT&T, Sprint and Commission Staff ("Staff"). The following witnesses testified on behalf of Applicants in support of the application: James A. Attwood, Jr., Executive Vice President, Strategic Development and Planning for GTE; Sherry F. Bellamy, President and CEO of Bell Atlantic-Maryland; Edward J. Weise, Region President, GTE North; Stephen L. Shore, Assistant Comptroller – Wireline Operations for GTE Corporation; Steven M. Banta, Vice-President –

Regulatory and Governmental Affairs, Central, for GTE Service Corporation; Jerome Holland, Director of Open Markets Transition Program Office for GTE; and John Peterson, Director – Contract Compliance for GTE Network Services. Cathleen M. Conway, District Manager-Government Affairs, and Joseph Gillan, an outside economist, testified on behalf of AT&T. David E. Stahly, Manager of Regulatory Policy, testified on behalf of Sprint. The following witnesses testified on behalf of Staff: Douglas Price, Section Chief-Rates in the Commission's Telecommunications Division; Cindy Jackson, an employee in the Office of Consumer Programs within the Commission's Consumer Services Division; S. Rick Gasparin, Samuel S. McClerren, Patrick L. Phipps and Julie M. VanderLaan, Economic Analysts in the Commission's Telecommunications Division; Marcy Schroll, the 9-1-1 Program Assistant for the Commission's Consumer Services Division; and Janis Freetly, a Financial Analyst in the Commission's Financial Analysis Division. At the conclusion of the hearing on June 30, 1998, the record was marked "Heard and Taken."

Applicants, AT&T, Sprint and Staff filed initial and reply briefs. Applicants, AT&T and Sprint filed draft orders.

The Hearing Examiners' proposed order was served on the parties. Briefs on exceptions were filed by Applicants, AT&T, Sprint, CoreComm and Staff. Replies to exceptions were filed by Applicants and Staff. These filings have been considered by the Commission in reaching its conclusions herein.

II. DESCRIPTION OF THE PROPOSED REORGANIZATION

GTE is a corporation created and existing under the laws of the State of New York with its principal place of business located in Irving, Texas. GTE is a diversified telecommunications company. Through its various subsidiaries, GTE provides customers throughout the United States and in several foreign countries with a wide variety of communication services, including voice, video and data telephone services, wireless communication services, directory publishing and advertising, and Internet and internetworking services. GTE's local telephone subsidiaries serve 22.3 million access lines in twenty-eight states, including Illinois. In addition, GTE Communications Corporation ("GTECC") is licensed in various states, including Illinois, to provide competitive local exchange service and long distance service. GTE also provides wireless services to its GTE wireless subsidiaries. GTE's annual operating revenues were $23 billion in 1997.

GTE has two subsidiaries that are regulated by the Commission as public utilities, GTE North Incorporated ("GTE North") and GTE South Incorporated ("GTE South"). GTE North is a Wisconsin corporation that provides local exchange telephone service, access service, and intra LATA toll service throughout the State of Illinois. GTE South is a Virginia corporation that provides local exchange telephone service, access service and intra LATA toll service.

Bell Atlantic is a corporation created and existing under the laws of the State of Delaware with its principal place of business in New York, New York. Bell Atlantic is a diversified telecommunications company that provides voice and data transport and calling services, network access, directory publishing and public telephone services. Bell Atlantic began operations in 1984 following the divestiture of AT&T. In 1997, Bell Atlantic merged with NYNEX, another regional Bell operating company ("RBOC"), having obtained the necessary approvals of the state commissions of Bell Atlantic's and NYNEX's service regions and of the Federal Communications Commission ("FCC"). Bell Atlantic's telephone operating subsidiaries provide communication services to customers in the Northeast and Mid-Atlantic Regions comprising 13 states and the District of Columbia. Bell Atlantic's telephone subsidiaries are regulated as public utilities in the states in which they operate and are regulated by the FCC for the interstate services they provide to interexchange carriers and users. Bell Atlantic's operating revenues in 1997 were $30 billion, of which approximately 80 percent was generated by the telephone subsidiaries.

GTE and Bell Atlantic entered into a merger agreement on July 27, 1998. Under the terms of the merger agreement, GTE will become a wholly owned subsidiary of Bell Atlantic. Accordingly, at the completion of the merger, Bell Atlantic will acquire indirect control of GTE North and GTE South. At the effective date of the merger, each outstanding share of GTE common stock will be cancelled and converted into the right to receive 1.22 shares of common stock of Bell Atlantic in a tax free stock-for-stock exchange.

Although the merger is structured so that Bell Atlantic will be the surviving parent, the merger is nevertheless a merger of equals. Prior to closing, the respective boards of directors of GTE and Bell Atlantic will each select half of the Board of Directors of the merged company, to the extent possible from current directors of the respective companies. Charles R. Lee, currently Chairman and Chief Executive Officer of GTE, will become chairman of the merged company. Mr. Lee will also serve as Co-Chief Executive Officer of the merged company together with Ivan Seidenberg, currently Chairman and Chief Executive Officer of Bell Atlantic. Mr. Seidenberg will be the President of the merged company and will become the sole Chief Executive Officer of the merged company on July 1, 2002. Mr. Lee will continue to serve as chairman until June 30, 2004, when he will be succeeded by Mr. Seidenberg. The management and corporate governance responsibilities will both be evenly divided between the corporations.

Because the merger is an exchange of stock at the parent company level, it does not involve or require the sale, assignment or transfer of the property of GTE North and GTE South. GTE North and GTE South will continue to hold all licenses and authorizations they held prior to the merger. None of the rates, terms, or conditions for the provisions of telecommunication services applicable to GTE North and GTE South, (which are on file with and approved by the Commission) will change as a result of the merger. No operations, lines, plant, franchise, or permits of the regulated subsidiaries will be merged with the lines, plant, franchises or permits of any other company.

III. APPLICABLE LAW

The action of the Commission in this proceeding with respect to the merger of GTE and Bell Atlantic is governed by Section 7-204 of the Act relating to the approval of reorganizations. Under Section 7-204, the term “reorganization” is defined as “any transaction which, regardless of the means by which it is accomplished, results in a change in the ownership of the majority of the voting capital stock of an Illinois public utility; or the ownership or control of any entity which owns or controls a majority of the voting capital stock of a public utility . . . . ”

The relevant portions of Section 7-204 provide:

> (b) No reorganization shall take place without prior Commission approval. The Commission shall not approve any proposed reorganization if the Commission finds, after notice and hearing, that the reorganization will adversely affect the utility’s ability to perform its duties under this Act. In reviewing any proposed reorganization, the Commission must find that:
>
> (1) the proposed reorganization will not diminish the utility’s ability to provide adequate, reliable, efficient, safe and least-cost public utility service;
>
> (2) the proposed reorganization will not result in the unjustified subsidization of non-utility activities by the utility or its customers;
>
> (3) costs and facilities are fairly and reasonably allocated between utility and non-utility activities in such a manner that the Commission may identify those costs and facilities which are properly included by the utility for ratemaking purposes;
>
> (4) the proposed reorganization will not significantly impair the utility’s ability to raise necessary capital on reasonable terms or to maintain a reasonable capital structure;
>
> (5) the utility will remain subject to all applicable laws, regulations, rules, decisions and policies governing the regulation of Illinois public utilities;

(6) the proposed reorganization is not likely to have a significant adverse affect on competition in those markets over which the Commission has jurisdiction;

(7) the proposed reorganization is not likely to result in any adverse rate impacts on retail customers.

(c) The Commission shall not approve a reorganization without ruling on:

(i) the allocation of any savings resulting from the proposed reorganization; and

(ii) whether the companies should be allowed to recover any costs incurred in accomplishing the proposed reorganization and, if so, the amount of costs eligible for recovery and how the costs will be allocated.

…

(f) In approving any proposed reorganization pursuant to this Section the Commission may impose such terms, conditions or requirements as, in its judgment, are necessary to protect the interests of the public utility and its customers.

AT&T contends that the merger of GTE and Bell Atlantic requires Commission approval under Section 7-102 of the Act. (AT&T Initial Brief at 10) Section 7-102(d) of the Act requires Commission approval before a public utility by any means, direct or indirect, can merge or consolidate its franchises, licenses, plant, business or other property with that of any other public utility. The Commission concludes that approval of the merger is not required under Section 7-102(d) of the Act. Section 7-102(d) of the Act applies to the merger of one public utility with another public utility. GTE North Incorporated and GTE South Incorporated, the two Illinois public utilities affected by the corporate reorganization, are not merging.

IV. OVERVIEW OF THE PARTIES' POSITIONS

A. Applicants' Position

Applicants contend that their evidence demonstrates that the proposed merger meets the requirements of Section 7-204(b) and (c). They indicate that Illinois consumers will benefit from merger generated savings, best practices and increased competition. They note that they have committed to many specific benefits, including the following:

GTE will reduce rates by $10.03 million upon merger consummation to account for earnings and merger savings.

GTE will file for a general rate case approximately three years after merger closure, allowing the Commission the opportunity to fully allocate actual, realized merger costs and savings.

Prior to that rate case, GTE will not apply for an increase in local residential and business service rates and local usage rates for non-competitive residential and business accounts (except as required for Commission ordered Universal Service Fund ("USF") modifications).

The merged entity will aggressively compete to provide local service to Chicago's residential and small and medium business customers, thus offering substantial head-to-head competition with Ameritech.

The merged entity will spend a minimum of $234 million in infrastructure capital investment in Illinois in the next three years. This commitment does not include additional investment the post-merged entity will be making to support entry into the Chicago market.

The merged entity will maintain office(s) in Illinois with a level of staff to ensure compliance with all Commission rules, statutes and orders.

Applicants indicate that they and Staff have resolved the vast majority of their issues. They state that Staff proposed thirty-five conditions in its testimony, and assert that they have satisfied all of Staff's recommended conditions, except for those that Staff withdrew and those that are outside the scope of review under Section 7-204 of the Act. (Applicants' Initial Brief at 3-4)

B. Staff's Position

Staff contends that the proposed merger, as filed, fails to meet all of the requirements in Sections 7-204(b) and (c), except for Section 7-204(b)(4), which requires that the proposed merger not significantly impair the utility's ability to raise necessary capital on reasonable terms or to maintain a reasonable capital structure. Staff states that the areas in which the proposed merger fails to meet the requirements of Section 7-204 include the impact on local exchange competition, service quality, cross-subsidization, and regulatory oversight and issues related to the flow-through of merger savings. Staff concludes, however, that if the Commission adopts Staff's proposed conditions, the proposed merger will meet all of the requirements of Section 7-204. Since the Applicants committed to implement several of Staff's conditions, Staff believes that the proposed merger should be approved, subject to Staff's conditions. (Staff Initial Brief at 4)[1]

[1] All citations in this order to Staff's initial brief refer to Staff's corrected initial brief filed on August 13, 1999.

C. AT&T's Position

AT&T contends that the proposed merger fails to meet the requirement in Section 7-204(b)(6) of the Act since it is likely to have a significant adverse effect on competition in those markets over which the Commission has jurisdiction. AT&T notes that the combined GTE/Bell Atlantic would encompass approximately 40% of the access lines in the United States. AT&T states that this concentration of monopoly assets in one entity raises anti-competitive concerns. AT&T asserts that the combined GTE/Bell Atlantic will be better able to resist competitive inroads within their service territories. AT&T contends that the harm to competition in Illinois will not be limited to GTE's exchanges since Applicants intend to exploit Bell Atlantic's northeast monopoly in pursuit of the "national" business customer in the Chicago market. AT&T characterizes the proposed merger as an effort to leverage the Applicants' exchange monopoly into a broader number of related products and geographic markets. (AT&T Initial Brief at 2-5)

AT&T contends that conventional regulatory conditions cannot cure the anti-competitive effects of the proposed merger. AT&T states that such conditions are simply promises on the part of the merged entity to cure particular shortcomings, and have proven to be ineffective if not unenforceable. AT&T recommends denial of the merger. AT&T indicates that if the Commission decides to approve the merger, the following conditions, in addition to those proposed by Staff, should be imposed as an attempt to blunt the ability of the merged entity to leverage its incumbent market power: (1) Applicants should be prohibited from offering any service outside of their franchise footprint, where any price, term or condition of service is dependent upon, jointly marketed with, or in any other way linked to the purchase of a service offered by them within their franchise area; (2) Applicants should be prohibited from evading their incumbent local exchange carrier ("ILEC") obligations by forming sham competitive local exchange carrier ("CLEC") affiliates to compete with themselves within their ILEC footprint; (3) GTE should be required to lower its intrastate switched access rates to cost to encourage competitive entry into in-state toll markets; and (4) Applicants should be required to automatically extend to entrants in Illinois the most favorable terms offered or obtained in any other state in which they operate, either as an incumbent or entrant. (*Id.* at 7-8 and 33)

D. Sprint's Position

Sprint recommends that the merger be denied. Sprint asserts that the merger will have numerous anti-competitive effects in Illinois that are not offset by the merger efficiencies claimed by Applicants. Sprint concludes that the merger violates Section 7-204(b)(6) of the Act and will have a significant adverse effect on competition for the following reasons: the merger (1) eliminates Bell Atlantic as a significant potential competitor in the local exchange market on its own in Illinois; (2) heightens the incentives and ability of the merged entity to discriminate against its competitors in the local exchange market; and (3) adversely effects competition in the intraLATA and interLATA markets as a result of the Applicants' increased incentive to discriminate against rivals in favor of their affiliated interexchange carriers. (Sprint initial brief at 1-2)

V. THE REORGANIZATIONS' COMPLIANCE WITH THE REQUIREMENTS OF SECTION 7-204(B) AND (C) OF THE ACT

A. Whether the proposed reorganization will diminish GTE's ability to provide adequate, efficient, safe and least-cost public utility service. Section 7-204(b)(1)

1. Applicants' Position

Applicants contend that the proposed merger will not diminish GTE North and GTE South's ability to provide adequate, reliable, efficient, safe and least-cost service. Applicants note that nothing about the merger reduces GTE's commitment to Illinois in terms of providing customers with quality service and modern innovative products and services via a state-of-the-art telecommunications infrastructure. (Applicants' Initial Brief at 12) Applicants take the position that not only will service quality not diminish, but that several benefits of the merged company will enhance the merged company's ability to maintain and improve service quality. (Applicants' Ex. 3.00 at 9)

First, Applicants note that they are committed to continuing to make the necessary capital investments in Illinois, not only to meet customers' current demands, but to be positioned to offer customers new and enhanced services. Moreover, Applicants point out that they have committed on the record to spend not less than $234 million in infrastructure capital investment in Illinois in the next three years, which they say is consistent with GTE's past and planned capital infrastructure investment in Illinois. (*Id.*)

Second, Applicants note that the evidence demonstrates that Bell Atlantic's service quality performance after its merger with NYNEX remained at a high level and in the former NYNEX territory of New York state, service continued to improve following the merger. (Applicants' Initial Brief at 12-13)

Third, Applicants point to GTE's generally high performance in achieving the Commission's Part 730 service quality objectives. In the period from January 1997 to the present, GTE met or exceeded every Commission quality of service standard except one. The one objective GTE did not consistently meet during that period, the Percent Out Of Service < 24 Hours ("OOS<24"), has since been corrected and GTE has not missed OOS<24 during the most recent 9 months. (Applicants' Initial Brief at 14)

Applicants also provided evidence that the merger will not affect 9-1-1 system integrity and that GTE has already taken steps to increase 9-1-1 staffing. (Applicants'

Initial Brief. at 15-16) After the merger, Applicants will evaluate implementation of Bell Atlantic's Universal Design Principles through the "best practices" process and will readily participate in any Commission effort to establish an industry-wide Disabilities Advisory Council. (Applicants' Initial Brief at 17-18)

2. Staff's Position

Staff expressed concerns regarding the impact of the proposed transaction on GTE's quality of service and proposed that several conditions be imposed if the merger is to be approved.

Staff raised several service quality concerns about the proposed reorganization. First, although Staff recognizes that the Applicants have no post-merger plans to change 9-1-1 operations in Illinois, Staff expressed a concern that organizational and operational differences between Applicants' respective 9-1-1 systems may result in diminished integrity of Applicants' 9-1-1 post-merger system. Specifically, Staff is concerned that Applicants' ability to maintain its 9-1-1 service quality may diminish if the post-merger company imposes organizational changes such as database integration and/or reduction of GTE's 9-1-1 staff in Illinois. To alleviate these concerns, Staff seeks to place conditions on the merger relating to 9-1-1 organizational changes by the post-merger company. Specifically, Staff recommends that GTE be required to obtain Commission approval prior to the reduction or removal of any 9-1-1 staff which are functional in providing 9-1-1 services in Illinois; and that any post-merger operational changes that are made in the delivery of 9-1-1 services be transparent to the 9-1-1 system. (Staff Initial Brief at 8) Staff further proposed that any rate increase requested specifically for 9-1-1 network and services should not create any additional profits for the merged company.

Second, Staff expressed a concern that Applicants have not provided detailed information regarding the "best practices" that Applicants will adopt after the merger. Based on that concern, Staff recommends that the Commission require Applicants to submit a list of "best practices" to the Commission within six months of merger consummation and for five years thereafter. Staff further recommends that Applicants be required to notify the Commission if a best practice cannot be implemented. (Staff Initial Brief at 11)

Staff also recommends that the proposed merger be conditioned on advancements in and improvements for access to telecommunications service for people with disabilities. (Staff Initial Brief at 11) Specifically, Staff proposes that the Commission condition merger approval on Applicants adopting Bell Atlantic's Universal Design Principles and establishing a Disabilities Advisory Council. (Staff Initial Brief at 14)

Staff emphasizes that GTE must continue to maintain an adequate presence in Illinois after the proposed merger to facilitate response to customers' needs and

Commission regulation. Accordingly, Staff recommends that the Commission require, as a condition of merger approval, that Applicants maintain an office(s) in Illinois with a level of staff necessary to ensure compliance with all Commission rules, statutes and orders. (Staff Initial Brief at 15-16)

Staff is also concerned that Applicants' commitment to enter the Chicago market not be executed to the detriment of GTE's existing Illinois customers and that customers' interests throughout the state be balanced for all classes of customers. Staff thus recommends that the Commission order, as a condition of merger approval, that the Applicants aggressively compete to provide local service to Chicago's residential, small and medium business customers, without diminishing service to GTE's current customers while entering Chicago. (Staff Initial Brief at 16-17)

In addition, Staff cites GTE's service quality record and raises a concern relative to GTE's performance in achieving the OOS<24 standard. Staff also cites to Ameritech Illinois's acquisition of certain assets of the former Sprint/Centel of Illinois and purported service quality problems after the unification of those two networks as an indication that a problem could arise after the merger. To allow Staff to monitor OOS<24, Staff recommends that the merger be conditioned on GTE filing monthly quality of service reports relative to Code Part 730 requirements for the three years following the merger with the Commission. (Staff Initial Brief at 18-20)

Staff also expresses concern about Applicants' post-merger investment in its network infrastructure. Staff asserts that GTE's technological deployment in Illinois lags behind that of the remainder of GTE's system. Staff notes that Applicants' $234 million commitment to continued post-merger network investment is inconsistent with the average level of network investment over the past four years. As a result, Staff seeks a condition on merger approval that will require Applicants to provide a "level of investment in the Illinois service territory that will ensure technical parity with the remainder of Applicants' system" and to provide annual Illinois infrastructure investment reports to the Commission for three years following the merger. (Staff Initial Brief at 21-23)

3. Applicants' Response

Applicants agree with Staff that 9-1-1 system integrity is extremely important with or without this merger, but note that the record does not contain any evidence that the proposed merger will negatively impact 9-1-1 service. (Applicants' Reply Brief at 6) Applicants note that, to the contrary, the record evidence demonstrates that Bell Atlantic had a very positive record of transparent transition of 9-1-1 services during the BA/NYNEX merger. (Applicants' Reply Brief at 5) Applicants maintain that the issue of 9-1-1 staffing is not properly before the Commission in a §7-204 merger review proceeding and that Staff should not recommend a condition requiring Commission approval of internal company personnel decisions. (Applicants' Initial Brief at 16) Despite these reservations, Applicants have made certain commitments that they maintain adequately address Staff's concerns regarding these issues. The commitments are to:

(a) make 9-1-1 transition or system integration transparent to Illinois customers (Applicants' Initial Brief at 15);

(b) add a 9-1-1 manager in Illinois and an engineer with Illinois and Indiana responsibilities (Applicants' Initial Brief at 16);

(c) advise Staff of any future plans to reduce 9-1-1 staffing in Illinois (Applicants' Initial Brief at 16, 61) and:

(d) file a "best practices" report with the Commission within six months of merger closure, and each six months thereafter for three years. (Applicants' Initial Brief at 62)

While Applicants agree that services to customers with disabilities is an important issue, Applicants maintain that Staff's proposed conditions regarding disability issues do not relate to the Commission's analysis of whether or not the proposed merger could diminish GTE service quality. (Applicants' Reply Brief at 7) Applicants, however, address Staff's concerns by committing, as a condition of merger approval, to evaluate Bell Atlantic's Universal Design Principles through the merger integration and best practices processes. Applicants also agree to participate in an industry-wide Disabilities Advisory Council. (Applicants' Initial Brief at 17)

Applicants do not contest imposition of Staff's recommended condition relating to Applicants' post-merger presence in Illinois, or Staff's requested condition relative to Chicago entry. (Applicants' Initial Brief at 63, 67) Applicants agreed to enter the Chicago market within 18 months of merger closure. (Applicants' Initial Brief at 67)

On the issue of Staff's recommendation that merger approval be conditioned on monthly reporting of Applicants OOS<24 hour status, Applicants state that the Commission currently has authority to request service quality reports, and nothing about the merger will affect that authority. (Applicants' Ex. 3.1 at 17-18) Applicants also point out that the Commission presently has an ongoing rulemaking (Docket No. 98-0453) which addresses, among other things, service quality reporting. Applicants further state that the record does not demonstrate a need to bypass the rulemaking and impose monthly service quality reporting on a single company as opposed to an industry-wide basis. (Applicants' Reply Brief at 5, 15) (Applicants' Ex. 3.1 at 18)

With respect to network modernization and infrastructure investment, Applicants point to the commitment by GTE to spend not less than $234 million in Illinois infrastructure investment in the next three years. Applicants further point out that this amount is in addition to investment that will made in Illinois to support the merged entity's entry into the Chicago market. Applicants contend that there is no record evidence that GTE's infrastructure investment commitment will result in diminished service quality as a result of the merger. (Applicants' Reply Brief at 8) Applicants disagree with Staff's position that GTE's deployment of services in Illinois relative to deployment in all other GTE territories is a meaningful measurement. Applicants state that such a measure ignores market characteristics and demand. (Applicants' Reply Brief at 9) Finally, Applicants point out that Staff has not defined how its proposed "technical parity" standard should be measured. (*Id.*)

Applicants agreed to the following conditions in response to Staff's concerns relative to Section 7-204(b)(1). Staff accepted some and rejected others.

(a) GTE will make an infrastructure investment in Illinois of no less than $234 million in the years next three years. Staff continues to assert that this amount is too low given past levels of expenditures and expenditures in other jurisdictions.

(b) Any rate increase the reorganized company requests specifically for 9-1-1 network and services shall be submitted to normal Commission review of proposed price increases. This satisfied Staff's concerns over the issue of 9-1-1 rate increases going to the bottom line of the merged company.

(c) The reorganized company will advise Commission Staff prior to the reduction or removal of any 9-1-1 staff from Illinois. Staff continues to urge the imposition of a condition requiring reductions in functional 9-1-1 staff to come to the Commission for approval.

(d) The reorganized company will submit to the Commission a list of "best practices" within six months of the consummation of the merger. Additionally, Applicants will file a "best practices" report each six months thereafter for three years. Staff continues to urge the Commission to condition approval of this merger upon the adoption of Bell Atlantic's best practices in providing service to the disabled. Staff also maintains that GTE should either form its own Disabilities Advisory Council or petition the Commission to undertake an inquiry on a state wide basis to determine the necessity of establishing such a body.

(e) Applicants will maintain an office(s) in Illinois, with a level of staff necessary to ensure compliance with all Commission rules, statutes, and orders. This satisfied Staff's concerns over company staffing levels.

(f) Applicants will aggressively compete to provide local service to Chicago's residential, small, and medium business customers,

> without diminishing service to GTE’s current customers while entering Chicago. This satisfied Staff’s concerns over maintaining the balance between all classes of customers while making Applicants’ commitment to compete in Chicago a matter of record.

4. Commission's Conclusion

Section 7-204(b)(1) requires the Commission to determine whether the proposed organization will “diminish [GTE’s] ability to provide adequate, reliable, efficient, safe and least-cost“ service in Illinois. At the outset, it must be noted that the standard contained in the statute requires the Commission to evaluate whether the impact of the proposed reorganization will be to diminish service quality, not whether the proposed merger will enhance service quality.

Based on the record evidence, the Commission finds that the proposed reorganization, when viewed in the light of the conditions agreed to by Applicants and modified hereafter by the Commission, will not diminish GTE’s ability to provide adequate, reliable, efficient, safe and least-cost telecommunications services in Illinois.

The Commission turns to the issue of the proposed merger's impact on the quality of the merged company's 9-1-1 system. The integrity and reliability of Illinois' 9-1-1 systems is of paramount concern to this Commission. Quite literally, the safety of all Illinois citizens depends on their ability to access emergency personnel quickly, accurately, and reliably.

The Commission agrees with Staff that the proposed merger raises concerns about the Joint Applicant's post-merger provision and maintenance of 9-1-1 service that must be addressed. There is credible evidence that the merger may lead to a reduction in the quality of the Joint Applicants' 9-1-1 service. Staff identified various operational differences between the Joint Applicants' 9-1-1 systems, including differences in billing systems and databases. (Staff Ex. 5.00 at 7-8) Staff concluded that integrating or standardizing the different policies, procedures, and systems could adversely affect the current 9-1-1 system. (*Id*.) Based on Staff's practical experience combining billing systems, 9-1-1 database systems and standardizing operations all have an impact on 9-1-1 service. (Staff Initial Brief at 6-9)

The Joint Applicants stated generally that they will not implement changes in 9-1-1 service that would adversely impact delivery of 9-1-1 service. Although neither GTE nor Bell Atlantic indicated that any immediate post-merger changes are planned, Bell Atlantic indicated that the new merged company will review many of its practices and procedures through merger integration teams ("MITs") and adopt "best practices" where appropriate. (Staff Ex. 5.00 at 3, citing DR MS1.02, Attachment 1, GTE/BA Ex. 3.1 at 7) An MIT may implement "best practices" that do not include those practices which GTE currently uses, and therefore, may have a negative impact on the delivery of 9-1-1 services.

As a consequence, given Staff's concerns regarding the operational differences between the Joint Applicants' 9-1-1 systems and the lack of substantive information provided by the Joint Applicants regarding post-merger plans for the 9-1-1 system, the Commission concludes that the proposed merger may have an adverse affect on the safety, reliability, and service quality of the 9-1-1 system if the Joint Applicants were to implement changes to the current system.

In order to protect the public interest and ensure the safety, reliability, and quality of the Joint Applicants' 9-1-1 systems, the Commission finds it necessary to impose the following condition on the merger using its authority under §7-204(f). The Commisison requires that the new company obtain Commission approval before implementing operational changes to GTE's current 9-1-1 system attributable to or in connection with the proposed merger, including, but not limited to changes in policies, processes, and procedures associated with 9-1-1 billing systems and databases.

In addition, the Commission requires that operational changes be transparent to both the 9-1-1 system and its subscribers. The Commission notes that GTE/BA witness Weise testified that the Joint Applicants commit to making any consolidation of data platforms transparent to all of the 9-1-1 customers in the State of Illinois should the companies decide to make any changes. (Tr. at 116)

The Commission, however, will not go so far as to adopt Staff's condition requiring the Joint Applicants to obtain Commisison approval for any proposed reduction or removal of 9-1-1 personnel in Illinois. (Staff Ex. 5.00 at 15) The Commission believes the process adopted herein strikes a reasonable balance and allows Staff to identify and raise any concerns that might warrant further investigation by the Commission. In reviewing the Joint Applicants' 9-1-1 staffing needs, we fully expect the new company to exercise prudent management practices and refrain from taking action that might compromise the integrity and reliability of the 9-1-1 system in Illinois.

The Commission also finds that the desire of Staff to secure improved services for GTE's disabled customers in Illinois does not relate to any potential diminishment of service quality. It is instead a request for enhancements, and does not relate to the requirements under §7-204(b)(1). It is noteworthy, however, that GTE has committed to evaluate Bell Atlantic's Universal Design Principles and to implement them as feasible. Recognizing the importance of services to customers with disabilities, the Commission will hold GTE to this commitment and will monitor GTE's progress regarding the Universal Design Principles through the "best practices" monitoring. The Commission will also require GTE to work with Commission Staff to explore a method of establishing an industry wide Disabilities Advisory Council.

The Applicants' agreement to provide, within six months of merger closure, and each six months thereafter, for a period of three years following merger closure, a report which identifies any proposed "best practice" whose adoption by the merged entity or its affiliates would affect the provisioning of intrastate telecommunications services to the disabled in Illinois provides further assurance that system reliability will not be compromised by the merger.

While GTE's performance relative to achievement of the Commission's OOS<24 standard is an important issue, the Commission notes that GTE has not missed OOS<24 during the most recent nine months and there is an open proceeding (Docket No. 98-0453) that is more specifically tailored to addressing the adequacy of current quality of service performance and reporting. Staff's concerns regarding a change in GTE's OOS<24 performance reporting are more appropriately considered in that proceeding. Further, Staff's proposed condition seemed to contemplate reporting of all Code Part 730 standards, while only one area of concern (OSS <24) was raised. In this light, Staff's proposed condition seems too broad to address the concerns it purportedly went to and must be rejected on this basis as well.

In terms of Applicants' commitment to invest a minimum of $234 million in its existing service territory over the next three years, the Commission agrees with Staff that the sum is too low. The record evidence shows that, over the five years between 1993 and 1997, GTE invested over $603 million (Applicants' Ex. 3.1 at 20) (an annual average of $120.7 million) in capital investment in Illinois. GTE has argued that the brunt of this investment was a recently completed central office modernization program. GTE Ex. 13A shows that GTE invested approximately $154.5 million in this program over the period from 1994 to 1998. Removing the $154.5 million figure in its entirety from GTE's overall capital investment results in an average annual expenditure of $90 million. This compares poorly with the $78 million annual commitment made by and agreed to by Applicants as a condition of merger approval. The Commission concludes that while, as a practical matter, GTE must continue a strong network investment strategy to compete in the telecommunications marketplace, the Commission must also honor its commitment to conclude that a proposed merger will not diminish the utility's ability to provide adequate, reliable, safe and least cost utility service. To that end, we conclude that Applicants should, as a condition of merger approval, be required to invest $270 million in capital improvements over the next three years. This amount reflects the average annual capital investment, excluding amounts spent on the central office modernization program. While this may seem like a large sum of investment, it should also be borne in mind that Applicants have committed to filing a rate case in three years, at which time any prudently incurred investments will be included in GTE's rate base and will form the basis for just and reasonable rates.

Staff also seeks a condition that would require the Applicants to maintain "technological parity" with the services provided in the other jurisdictions served by the merged company. Applicants object to this, arguing that conditions of service in other jurisdictions are dissimilar to conditions of service in Illinois, making such comparisons meaningless. Applicants also note that Staff has not defined "technological parity." While "technological parity" with other jurisdictions may be a laudable goal, the term is so ill-defined and the conditions of service so distinct that no real benchmarks exist against which to judge the Applicants' success in meeting such a condition. While we will not impose the maintenance of "technological parity" as a condition of merger approval, we do find that Staff should be made aware of new services and service improvements that are offered or made in the other jurisdictions served by the merged company. To that end, as a condition of merger approval, Applicants shall file annual reports for three years, detailing the manner in which the three $90 million annual investments ordered herein are expended and detailing new services and service improvements in the remaining jurisdictions served by the merged company.

B. Whether the proposed reorganization will result in the unjustified subsidization of non-utility activities by the utility or its customers; and, whether costs and facilities are fairly and reasonably allocated between utility and non-utility activities in such manner that the Commission may identify those costs and facilities which are properly included by the utility for ratemaking purposes. Section 7-204(b)(2) and (3)

1. Applicants' Position

Applicants contend that the proposed merger will not result in any subsidization of non-utility activities by GTE or its customers. Applicants note that GTE currently uses Commission approved cost allocation procedures to allocate costs among the various business units, and between regulated and non-regulated operations. (Applicants' Initial Brief at 18-19) Applicants' witness Shore testified that these cost allocation procedures prevent any subsidization of non-utility activities by the utility or its customers. He indicated that GTE's cost allocation procedures were reviewed and accepted by the Commission in GTE's 1994 rate case order, and are attested to annually by outside auditors and examined by the FCC. He noted that GTE's cost allocation procedures may change over time. He stated that GTE's and Bell Atlantic's current cost allocation methods are different and that the merged company will eventually seek to standardize allocation methods throughout its operations. He also indicated that the merged company may modify its allocation procedures because of the increased scope and scale of its operations. He emphasized that GTE's allocation procedures will continue to comply with all Commission regulations, including those applicable to affiliate operations. He also indicated that GTE's current cost allocation procedures and any future changes thereto in compliance with Commission regulations ensure that costs and facilities are fairly and reasonably allocated between utility and non-utility activities in such a manner that the Commission may identify those costs and facilities which are properly included by the utility for ratemaking purposes. (Applicants' Ex. 5.00 at 17-18)

2. Staff's Position

Staff witness Price stated that it is necessary to impose the following condition so that Staff and the Commission can verify that the requirements of Section 7-204(b) and (c) are met:

> The reorganized company must provide access to all books, accounts, records, and personnel of Bell Atlantic, GTE, and all their utility and non-utility affiliated parent, sister and subsidiary companies, as well as independent auditors' work papers; as requested by the Commission.

Mr. Price testified that access to these various company's records will allow Staff to determine whether there have been any transactions between Bell Atlantic or other GTE affiliates and GTE North or GTE South in Illinois, or if other affiliate transactions have impacted GTE North or GTE South.

Applicants accepted the above condition recommended by Staff. (Applicants' Initial Brief at 19; Reply Brief at 11 and 28)

Mr. Price testified that GTE must continue to utilize the accounting procedures prescribed by 83 Ill. Adm. Code 711, the Commission's Telecommunications Cost Allocation Manual ("CAM") for large companies, which provides the allowable bases for allocation of costs and requires the filing of an Illinois CAM. He noted that GTE will also be required to file a CAM with the FCC and to obtain the report of an independent auditor regarding compliance of the CAM with federal requirements. He recommended, as a condition of merger approval, that the reorganized company be required to file a revised Illinois CAM for GTE within 60 days of the consummation of the merger. He stated that an acceptable alternative would be the filing of the Illinois revised CAM at the same time that the revised CAM is filed with the FCC. He indicated that the required changes to the Illinois CAM include a brief description of each of GTE's affiliates, and for each affiliate transaction, a description of the type of transaction, the billing provisions for each service or product, and the frequency of transactions. He indicated that all relevant company personnel must be informed that the CAM has been revised, have ready access to the revised CAM, and be trained in its application. (Staff Ex. 1.00 at 11-14; Ex. 1.01P at 8)

Applicants indicate that the only unresolved issue concerning the CAM is the timing of the filing of the Illinois CAM. Applicant's witness Shore testified that the Illinois CAM requires extensive reformatting that cannot be completed until after the FCC CAM has been finalized and filed. He recommended that Staff's condition be revised to require the filing of the revised post-merger FCC CAM with the Commission concurrent with its filing at the FCC, and the filing of the post-merger revised Illinois CAM within 60 days thereafter. (Applicants' Ex. 5.2 at 3) Applicants assert that Staff never explained why concurrent filing of the revised Illinois CAM and revised FCC CAM is necessary. (Applicants' Reply Brief at 10)

Staff indicates that it reluctantly agreed to Applicant's alternative proposal regarding the timing of the filing of the revised Illinois CAM. Staff notes that Mr. Shore testified that the primary reason why the Illinois CAM could not be filed concurrently with the FCC CAM is manpower constraints. Staff questions why the merged company would not have the necessary manpower to make the concurrent filing. (Staff's Reply Brief at 11-12)

3. AT&T's Position

AT&T indicates that Applicants plan to attract customers in Chicago with competitive offerings that are tied to monopoly offerings either in GTE's downstate Illinois service area or in Bell Atlantic's service area in the northeast United States. AT&T concludes that since the monopoly ratepayers of GTE and Bell Atlantic will be subsidizing Applicant's offerings in Chicago, the proposed merger violates Section 7-204(b)(2) of the Act. For the same reason, AT&T concludes that the proposed merger fails to meet the requirements of Section 7-204(b)(3) of the Act. (AT&T Initial Brief at 34-35)

In response, Applicants indicate that AT&T presented no evidence to support this argument nor any explanation as to why the Commission's safeguards against cross-subsidy and regulation of Applicants' affiliate transactions would be insufficient. (Applicants' Reply Brief at 11)

4. Commission's Conclusion

With the adoption of the conditions described hereafter, the Commission finds that the proposed merger presents no concerns about improper subsidization or cost allocations under Section 7-204(b)(2) and 7-204(b)(3). The merger will not result in the unjustified subsidization of non-utility activities by GTE or its customers and, after the merger, costs and facilities will be fairly and reasonably allocated between utility and non-utility activities in such manner that the Commission may identify those costs and facilities which are properly included by the utility for ratemaking purposes.

83 Ill. Adm. Code 711 provides a comprehensive set of procedures to address the allocation of costs between utility and non-utility activities, and protect against cross-subsidies. GTE has used and must continue to use the accounting procedures prescribed by Part 711 for cost allocation. GTE's procedures have been reviewed by this Commission in past rate cases, attested to annually by outside auditors, and examined regularly by Commission Staff. The Commission concludes that these procedures should remain effective in preventing any improper cross-subsidies after the merger.

The Commission adopts Staff's proposed condition regarding access to books, accounts, records and personnel. This condition, which was accepted by Applicants, is necessary to enable Staff to determine whether costs have been properly allocated and whether any unjustified subsidization of non-utility activities by GTE North or GTE South or their customers has occurred.

With regard to Staff's second condition pertaining to the filing of the revised Illinois CAM, the only issue in dispute between Applicants and Staff is the timing of the filing. The Commission accepts Applicants' alternative proposal that the reorganized company be required to file a copy of its revised post-merger FCC CAM with the Commission concurrently with the filing of said CAM with the FCC, and a copy of the revised Illinois CAM with the Commission 60 days thereafter. Applicants have indicated that the Illinois CAM requires extensive reformatting that cannot be completed until after the FCC CAM is finalized. The Commission will, however, hold GTE to its commitment to file a copy of the FCC CAM with the Commission within 60 days of merger closure.

The Commission rejects AT&T's argument that the merger will result in improper cross-subsidization or cost allocations. No evidence has been presented which indicates that the Commission's ability to monitor against improper cross-subsidies and cost allocation will be impaired as a result of this merger. We find no evidence that the merged entity's entry into new competitive markets will prevent this Commission from ensuring that there is continued adherence to proper cost allocation procedures.

C. Whether the proposed reorganization will not significantly impair the utility's ability to raise necessary capital on reasonable terms or to maintain a reasonable capital structure. Section 7-204(b)(4)

1. Applicants' Position

Applicants aver that the proposed reorganization will not impair GTE North or GTE South's ability to raise necessary capital on reasonable terms or to maintain a reasonable capital structure. (Applicants' Initial Brief at 20) Applicants point out that the record demonstrates that the merged entity will have increased financial strength, greater financial flexibility and greater access to capital than either company individually. (Applicants' Ex. 1.1 at 6.0) (Applicants' Initial Brief at 20) The consummation of the merger will not require either of the Applicants to incur additional debt. (Applicants' Initial Brief at 21)

2. Staff's Position

Staff agrees with Applicants' position that the proposed reorganization will not impair GTE's ability to raise capital or maintain a reasonable capital structure as required under §7-204(b)(4). (Staff Initial Brief at 26) Staff notes that GTE has access to long-term debt capital on reasonable terms because both GTE North and GTE South have a corporate credit rating of "AA" from Standard & Poor's ("S&P"). GTE North and GTE South also have access to the short-term debt and equity markets on reasonable terms as a result of GTE's "A" S&P rating. (Staff Ex. 8.00 at 2-4) Based on Staff's evaluation of the new parent company, Bell Atlantic, Staff points out that Bell Atlantic's "A+" S&P corporate credit rating suggests a relatively strong financial condition that is slightly better than the "A" rating of GTE North and GTE South's current parent company, GTE. Staff concludes that GTE North and GTE South's ability to obtain short-term debt and equity capital on reasonable terms may be slightly improved if the merger is improved. (Staff Initial Brief at 27)

3. Commission's Conclusion

The Commission finds that the proposed merger will not significantly impair the Company's ability to raise necessary capital on reasonable terms or to maintain a reasonable capital structure for the reasons stated above by Applicants and Staff. We therefore find that the proposed merger satisfies the requirements of §7-204(b)(4).

D. Whether the utility will remain subject to all applicable laws, rules and policies governing the regulation of Illinois public utilities. Section 7-204(b)(5)

1. Applicants' Position

Applicants contend that after the proposed merger, the Commission's jurisdiction to regulate GTE North and GTE South will be unchanged. Applicants point out that because the proposed merger is a parent company merger, there will be no change in the legal status of GTE's operating companies. After the merger, GTE North and GTE South will become second tier subsidiaries of Bell Atlantic, and therefore they will remain subject to the same laws, regulations, rules, decisions and policies after the merger as before the merger. Because the Commission's jurisdiction and authority over GTE will not change as a result of this merger, and GTE will remain subject to all applicable laws, Applicants conclude that the proposed merger satisfies the criteria of §7-204(b)(5). (Applicants' Initial Brief at 22)

Applicants take the position that the plain language of §7-204(b)(5) dictates that any analysis under this section of the statute is limited to whether or not the Commission has continued jurisdiction over the post-merged company to the same extent as before the merger. Applicants state further that, although they differ with the Staff's interpretation of the scope of proper analysis under §7-204(b)(5), they have made commitments adequate to satisfy Staff's concerns relative to §7-204(b)(5). (Applicants Initial Brief at 22; Applicants' Reply Brief at 13) Applicants have agreed to:

(1) comply with all terms and conditions in each of GTE's interconnection agreements for the full length of the contracts. This satisfied Staff's concerns relating to certain behavior alleged against Bell Atlantic and the manner in which it imposed termination fees upon the assignment of interconnection agreements;

(2) fully comply with all legal requirements under existing interconnection agreements entered into by GTE in Illinois and all legal obligations concerning the assumption of those agreements. (Applicants Initial Brief at 23) This addresses Staff concerns similar to those addressed in (1) immediately above;

(3) maintain an office(s) in Illinois, with a level of staff necessary to ensure compliance with all Commission rules, statutes and orders. This addresses Staff concerns over the Applicants lack of commitment to a continued level of staffing in Illinois and its purported effect upon the willingness of the merged company to comply with Commission oversight and directives;

(4) advise Staff of any future plans to reduce 9-1-1 staff in Illinois. This addresses a concern similar to that raised in number (3) immediately above.

2. Staff’s Position

Staff disagrees with Applicants’ position that the inquiry under §7-204(b)(5) is limited to whether or not the post-merged company will remain subject to all applicable laws, rules, regulations, decisions and policies governing Illinois public utilities after the merger. Staff argues that the analysis should extend to whether or not the merger will make it more difficult for the Commission to regulate the merged company. (Staff Initial Brief at 27) Staff asserts that GTE and Bell Atlantic have engaged in practices in the past that Staff views as non-compliant and therefore conditions to merger approval are necessary to guard against future non-compliance.

Staff's initial brief contains a recitation of all currently recommended conditions. (Staff Initial Brief at 55-61) At no point did Staff indicate that any issue remained concerning the ability of the Commission to continue to regulate the jurisdictional post-merger entity, from which the Commission infers that Applicants have made adequate commitments to address Staff's concerns and to satisfy the requirements of §7-204(b)(5).

3. Commission's Conclusion

The language of §7-204(b)(5) requires an inquiry into whether “the utility” (here GTE) will “remain subject to” all “applicable law, regulations, rules, decisions, and policies governing the regulation of Illinois public utilities.” The language clearly expresses the statutory intent of this section, which is to ensure that the reorganization is not used as a means of sheltering a utility’s regulated activities from Commission regulation. In prior cases, we therefore have construed this provision very literally, asking simply whether “the Commission’s jurisdiction will . . . be impacted by the proposed merger” and whether the utility “will continue to be regulated in the same manner and to the same extent it is regulated today.” <u>Order in Docket No. 97-0300,</u> at

13, See also Order in Docket No. 95-0551, at 68; Order in Docket No. 94-0439 at 36; Order in Docket No. 90-0337, at 7, 10.

Nothing in the record before us supports a departure from this past practice and the plain language of the statute itself. The Applicants have stated, Staff has agreed, and no party has argued otherwise, that GTE will remain subject to the jurisdiction of the Commission and to all laws to the same extent after the merger as before the merger. That is all that §7-204(b)(5) requires.

Staff has not presented any evidence that our authority to regulate the post-merged entity will be diminished by the merger. We will have all of the same enforcement tools and powers with respect to GTE after the merger as we had before the merger and we will not deviate from past practice based on speculation.

Moreover and, as Staff has agreed, any possible concerns regarding this issue are satisfied by Applicants' agreement to Staff's recommended conditions related to existing interconnection agreements. We will hold them to these commitments and adopt them as conditions to merger approval.

E. Whether the proposed reorganization is not likely to have a significant adverse effect on competition in those markets over which the Commission has jurisdiction. Section 7-204(b)(6)

1. Applicants' Position

Applicants contend that the merger will have no adverse effect on competition in those markets over which the Commission has jurisdiction. Applicants assert that this conclusion is affirmed by the United States Department of Justice ("DOJ") examination of competitive issues related to the merger. Applicants stated that they entered into a consent decree with the DOJ that required them to divest certain wireless properties, including some in Illinois, and that the DOJ did not seek to enjoin any aspect of the proposed merger. They note that the DOJ did not express concern about the merger's impact on the local exchange market or possible monopoly leveraging. (Applicants' Initial Brief at 23-25)

Applicants indicate that if there were some adverse effect on competition by the merger, it would be counterbalanced by the benefits the merger will bring to competition in Illinois, particularly in Chicago where the merged company will be a strong competitor to Ameritech. These benefits are described in the next four paragraphs.

Applicants explained how the merger will bring enhanced competition to the local exchange market in Illinois. Applicants have committed that the combined company will enter the Chicago market within 18 months of merger consummation. Applicants have further stated that they will offer services to not only business customers but also residential customers in Chicago. Chicago was chosen because of its calling affinities with New York and other cities in the Northeast. The merger will actually bring Bell Atlantic as a competitor to Illinois, when it would not otherwise have entered. Applicants indicate that the combined Bell Atlantic/GTE will be a much stronger, better competitor to Ameritech and others in Chicago than either company could have been alone. The merged company will be able to take advantage of Bell Atlantic's in-region customer relationships with the hundreds of Fortune 1000 companies headquartered in the Boston-New York-Washington, D.C. corridor that have local offices around the country, including in Ameritech's franchise area. Applicants indicate that these relationships, combined with GTE's operational platform and presence in Illinois, will allow the merged entity to compete much more successfully than otherwise possible as sole entrants. (Applicants Initial Brief at 42-43)

Applicants also indicate that the merger will accelerate GTE's plans to develop its nationwide long distance and data network, the Global Network Infrastructure ("GNI"). Bell Atlantic's customer base is expected to generate more long distance and Internet traffic than GTE can be expected to develop by itself. As Mr. Attwood explained,

> [t]he potential increased traffic will make it more economical for the merged company to extend the GNI faster and over a wider area. This development will create another facilities-based long distance carrier to rival the only three companies that have long distance networks that are truly national in scope -- AT&T, MCI WorldCom, and Sprint. Likewise, the accelerated development of the GNI will position the merged company as a strong competitor to MCI WorldCom and increase the number of valuable Web sites and potential customers connected to the merged company's Internet backbone network.

Thus, Applicants conclude that the merger will bring enhanced competition to Illinois customers for long distance and data services. (*Id.* at 43)

Applicants further indicate that the merger will allow GTE and Bell Atlantic to compete in Illinois in the market for customers who are interested in purchasing a package of services. Applicants indicate that over the last few years of active consolidation within the industry, strong national competitors have emerged that are poised to offer a full package of wireline, wireless, long distance, and data services in all areas of the country, including Illinois. Applicants state that these national competitors include (1) MCI/WorldCom/UUnet/ MFS, (2) AT&T/TCG/TCI/Time Warner, (3) Sprint/Sprint Spectrum, and (4) SBC/Pacific Telesis/Ameritech/SNET. Applicants conclude that their merger will create another national competitor that can offer Illinois consumers a full package of telecommunications service on a nationwide basis. (*Id.* at 43-44)

Finally, Applicants indicate that the merged company will be better situated than either company would be on its own to provide quality telecommunications services efficiently at competitive prices. Applicant's witness Atwood explained that the merged company will have greater financial resources and flexibility, technological and management expertise, and an expanded national presence that will make it more competitive than the two companies would have been on their own. He indicated that the merged company will have better access to capital because of the combined financial strength of GTE and Bell Atlantic and lower procurement costs and more economical facility deployment and network investments because of increased economies of scale. He indicated that the merged company will also likely produce more innovative products and services at a lower cost because of combined research and development efforts. (Applicants Ex. 1.00 at 15-16) Applicants indicate that these efficiencies will also be achievable through the implementation of best practices. (Applicants' Initial Brief at 44)

2. Positions of AT&T and Sprint

AT&T and Sprint recommend that the proposed merger be denied since it would have a significant adverse effect on competition in those markets over which the Commission has jurisdiction. In reaching this conclusion, they assert that the Commission's analysis of the likely effect of the proposed merger on competition should not be limited to the application of antitrust laws and principles. They state that nothing in Section 7-204(b)(6) of the Act indicates an intent by the General Assembly to limit the Commission's investigation of the impact of a proposed merger to an analysis of state or federal antitrust laws. AT&T states that the proper approach is for the Commission to carry out its statutory responsibilities under the Act and leave the task of applying the Merger Guidelines under the Clayton Act to the DOJ. (AT&T Reply Brief at 5-7; Sprint Initial Brief at 7-8)

AT&T states that the combined GTE/Bell Atlantic would encompass approximately 40% of the access lines in the United States. AT&T indicates that this extreme concentration of monopoly assets in one entity raises intense anti-competitive concerns. (AT&T Initial Brief at 4)

AT&T and Sprint contend that that the merger will have a significant adverse effect on competition in Illinois markets since it would eliminate Bell Atlantic as a potential competitor. AT&T states that absent the merger, Bell Atlantic inevitably would be a significant entrant into the local exchange market in Illinois. AT&T asserts that while Bell Atlantic has not indicated any present intent to enter Chicago, it is set up to enter that market. AT&T states that Bell Atlantic already serves customers that have locations in Chicago and certainly possesses the financial resources to enter the Chicago market. AT&T states that absent the merger, it would be an irrational business decision for Bell Atlantic to ignore Chicago, the nation's third largest telecommunications market, while it is an incumbent in the largest market (New York) and the fourth largest market (Philadelphia). AT&T concludes that Bell Atlantic must and will seek to enter Chicago if it wishes to be a nationwide provider of telecommunications services. (AT&T Initial Brief at 28)

Similarly, Sprint states that Bell Atlantic has the necessary assets to enter Illinois local exchange markets without combining with GTE. Sprint notes that Bell Atlantic has 40 million domestic access lines, 6 million wireless customers, and annual operating revenues of $30 billion. Sprint further notes that Bell Atlantic serves 27% of the business lines in the United States, more than any other Regional Bell Operating Company ("RBOC"). Sprint asserts that unlike the small CLECs currently operating in Illinois, Bell Atlantic would represent an immediate competitive threat to Ameritech and would undoubtedly bring the long-awaited benefits of competition to the Illinois local exchange market. (Sprint Initial Brief at 11) Sprint witness Stahly provided the following reasons why Bell Atlantic should be considered a potential entrant in Illinois. First, Bell Atlantic has extensive experience as a supplier of local services, including experience in the engineering, design, marketing and operation of local telephone networks serving businesses and residences. Second, Bell Atlantic possesses fully functioning and time-tested operational support systems ("OSS") and billing systems that are critically important to the provision of local exchange service and exchange access services. Third, Bell Atlantic possesses a clear marketing message based on many years of local service provision and a well-known brand name. Fourth, Bell Atlantic has first-hand knowledge of the kind of inputs that an ILEC can provide. (Sprint Ex. 1.0 at 9) Sprint concludes that Bell Atlantic is reasonably likely to enter the Illinois local exchange markets absent the merger and would be a deconcentrating force in that market. (Sprint Initial Brief at 13-14)

Sprint contends that the proposed merger will heighten the incentives and ability of GTE to disadvantage CLECs in the local exchange market. Sprint notes that GTE controls 99% of the access lines in its franchised territory in Illinois and thus has an incentive to discourage entry and robust competition. Sprint indicates that the increased incentive for the merged entity to engage in anti-competitive conduct is due to the internalization of spillover effects. Sprint states that when the excluded CLEC operates in multiple markets, the incumbent in each of those markets realizes a spillover benefit from GTE's conduct. (Sprint Initial Brief at 15-17) Sprint witness Stahly explained the spillover benefit in the following manner. When GTE competitively weakens a rival in Illinois, it may also weaken that rival throughout GTE's region. While Bell Atlantic may already benefit from GTE's exclusionary behavior, GTE derives no profits from the benefits to Bell Atlantic. Thus, in deciding the extent to which it will harm CLECs in Illinois, GTE does not take these "spillover" effects on the profits of Bell Atlantic into account. Following the merger, however, the merged firm would benefit from the effects of its exclusionary activity in Illinois on competition in Bell Atlantic's territory. The merged firm, therefore, would incorporate these "spillovers" in choosing the level of effort undertaken to hamper the competitive efforts of CLECs in Illinois. In sum, the merger would make exclusionary behavior in Illinois look more profitable to GTE. Because the gains from exclusion would be "internal" to the combined firm, it would have an incentive to increase the amount of discrimination it undertakes. (Sprint Ex. 1.0 at 17)

Similarly, AT&T contends that the merged company would have an increased ability and incentive to resist competition in Illinois. AT&T asserts that Applicants plan to tie non-competitive in-region offerings to competitive ones outside their monopoly service territory. AT&T states that the fundamental intent of the merger is to adversely affect competition in Illinois and elsewhere by positioning the merged company to better leverage its incumbent power by bundling competitive services with monopoly services offered within the expanded "incumbent footprint." AT&T concludes that the intent of the merger is contrary to the pro-competitive goals of the Public Utilities Act., and the federal Telecommunications Act of 1996. AT&T asserts that the goal should be to eliminate the market power of incumbents, not concentrate it through a wave of unconstrained consolidation. (AT&T Initial Brief at 11-14)

AT&T contends that Applicants have market power in their incumbent service territories. AT&T notes that data from the FCC's Local Competition Report reveals that Applicants have local market shares at or near 100% in numerous states. AT&T states that in GTE's Illinois service territory, GTE only provides 1,787 resold lines and 172 unbundled loops to competitors and has not established any physical collocations. (*Id.* at 16-18)

Sprint and AT&T also indicate that the proposed merger will have an adverse effect on competition in the interexchange market. They indicate that the merged company has an incentive to engage in a "price squeeze" whereby it charges higher prices to long distance rivals for switched access than it charges to its interexchange affiliates. They state that GTE's pricing of access charges above cost enables it to engage in a price squeeze. (Sprint Initial Brief at 20-24; AT&T Initial Brief at 20-25)

Sprint and AT&T further indicate that the proposed merger would reduce the benchmarks available to the Commission to judge the incumbent's performance on competitive issues. AT&T states that one of the best ways to judge whether an ILEC's claim that a pro-competitive action is not feasible or unduly costly is to compare the position taken by other incumbents. Sprint concludes that the ability to benchmark behavior against other large ILECs would be significantly reduced by the proposed merger. (Sprint Initial Brief at 18-20; AT&T Initial Brief at 28-29)

Sprint contends that the benefits of the merger alleged by Applicants are illusory and do not offset the competitive harms. Sprint emphasizes that the merger eliminates Bell Atlantic as a potential competitor and that GTE, through its affiliate, GTE Communications Corporation, is providing local exchange service in Chicago and was intending to compete on a national basis absent the merger. (Sprint Initial Brief at 24-25)

AT&T asserts that conventional regulatory conditions cannot prevent the anti-competitive effects of the proposed merger. AT&T indicates that such conditions address the symptoms of the underlying problem, not its cause. AT&T recommends that the following conditions be imposed if the Commission decides not to reject the proposed merger: (1) Applicants should be prohibited from offering any service outside of their franchise service territory where any price, term or condition of service is dependent upon, jointly marketed with, or in any other way linked to the purchase of a service offered by Applicants within their franchise area; (2) Applicants should be prohibited from evading their ILEC obligations by forming phony CLEC-affiliates to "compete" with themselves within their ILEC serving territory; (3) GTE should be required to reduce its access charges by $46.8 million to cost; and (4) Applicants should be required to automatically extend to entrants in Illinois the most favorable terms offered or obtained in any other state where Applicants operate, either as an incumbent or entrant. (AT&T Initial Brief at 30-33)

Following the close of the evidentiary record in this docket, the Commission began deliberating a similar transaction between Ameritech Illinois and SBC Communications (Docket No. 98-0555, Order entered September 23, 1999). As part of those deliberations, the Commission considered, and eventually adopted, four commitments relating to interconnection as conditions on that merger. Sprint, in its Brief on Exceptions to the Hearing Examiners' Proposed Order in this docket, urged the adoption of the four interconnection commitments under consideration in Docket No. 98-0555. (Sprint Brief on Exceptions at 16 and 21-22)

3. Applicants' Response to AT&T and Sprint

Applicants note that only Sprint and AT&T contend that the merger fails to meet the requirement in Section 7-204(b)(7). Applicants indicate that the arguments of Sprint and AT&T can be grouped into four allegations: (1) the merger removes a potential competitor, Bell Atlantic; (2) the merged company would have an increased incentive and ability to engage in anti-competitive behavior; (3) the merged company can benefit from a "price squeeze"; and (4) the merged company could engage in "monopoly leveraging." (Applicants Reply Brief at 15)

Applicants contend that to make a case under the actual potential competition doctrine, a party challenging a merger must show that: (1) the relevant product and geographic markets are concentrated; (2) absent the merger, the alleged potential competitor would likely have entered the market in the near future on its own; (3) entry by the alleged competitor carries a substantial likelihood of ultimately producing deconcentration of the market or other significant pro-competitive effects; and (4) the alleged potential competitor must be one of only a few equally likely potential entrants, since a large number of entrants would make the elimination of one competitively insignificant. (*Marine Bancorporation*, 418 U.S. at 632-34; *Tenneco*, 689 F.2d at 352; *B.A.T. Indus*., 104 F.T.C. at 922-25) (Applicants' Initial Brief at 28-29)

Applicants contend that entry must be shown by clear proof and assert that there is no evidence that Bell Atlantic would enter GTE's local exchange markets in Illinois in the near future. Applicants' witness Bellamy testified that absent the merger, Bell Atlantic has no future plans to compete in the local exchange market in Illinois. She indicated that GTE's territories in Illinois are largely in suburban and rural areas, and thus do not contain concentrations of business or residential customers that a new entrant would look toward as part of a profitable market entry strategy. She stated that Bell Atlantic's strategy for entering local markets called for an initial, successful long distance offering in those markets. She noted that while Bell Atlantic subsidiaries are authorized to provide long distance service in Illinois, they only have a handful of customers in Illinois and do not have the necessary concentrations in GTE's territories. With respect to other markets such as Chicago, she stated that Bell Atlantic must be able to generate a volume of traffic that would make it economical to deploy switches and fiber in those regions. She indicated that Bell Atlantic could not formulate and implement a viable local market strategy to enter Chicago because of its geographical separation from Chicago and lack of facilities, operations support and marketing presence. (Applicants Ex. 2.00 at 11-12) Applicants point out that no witness has presented a business or strategic plan of Bell Atlantic to enter GTE's local exchange market or other markets in Illinois. (Applicants Initial Brief at 31)

Applicants contend that Bell Atlantic's entry would not have any significant deconcentrating effect on GTE's local exchange markets in Illinois. They assert that Sprint has failed to show how Bell Atlantic's entry could have any greater deconcentrating effect than the entry of AT&T, Sprint and MCI WorldCom. Applicants note that Bell Atlantic's brand name is not widely recognized in Illinois. In contrast, they state that both Sprint and AT&T have begun to compete in Illinois, enjoy wide brand recognition because of their long distance operations, and have substantial relationships with customers as a result of that long distance business. (Applicants' Initial Brief at 35)

Applicants further argue that there are many potential entrants into GTE's local exchange market in Illinois. They note that the federal Merger Guidelines, adopted by the Department of Justice ("DOJ"), provide that the DOJ is "unlikely" to challenge a potential competition merger "if the entry advantages ascribed to the acquiring firm (or another advantage of comparable importance) are also possessed by three or more firms." They assert that there are unquestionably more than three firms that possess comparable, if not superior, qualities to Bell Atlantic as potential entrants into GTE's local exchange markets in Illinois. They indicate that such firms include the large interexchange carriers (AT&T, MCI WorldCom and Sprint) and the large Regional Bell Operating Companies. Applicants state that a number of small CLECs would also be potential competitors. (Applicants Initial Brief at 36-42)

Applicants indicate that AT&T and Sprint focus on whether Bell Atlantic is reasonably likely to enter the Illinois local exchange market. Applicants state that this standard is not the sole element of the potential competition doctrine and is not even the correct legal standard to show entry. Applicants state that even if AT&T and Sprint are correct about the applicable legal standard, their evidence falls far short of establishing that Bell Atlantic is reasonably likely to enter any specific local exchange market. Applicants assert that AT&T and Sprint have only shown that Bell Atlantic is capable of entering the Illinois local exchange market. (Applicants' Reply Brief at 19)

Applicants contend that the merger will not lead to a greater incentive to engage in unlawful behavior to exclude rivals. They disagree with Sprint's contention that a wider footprint will allow the combined company to internalize the "spillover effects" of discriminatory conduct that are not presently captured. They dispute Sprint's contention that the combined company would have an incentive to degrade the quality of its access services in Illinois. They assert that Sprint's spillover effect theory has consistently been rejected by regulators as speculative and unfounded. Moreover, Applicants argue that the "spillover effect" theory would not justify blocking the merger, even if it were well founded, because existing regulatory safeguards will protect Sprint and consumers in Illinois. They note that price and access issues will continue to be regulated by state and federal authorities. (Applicants Initial Brief at 47-48)

Applicants disagree with the contention of AT&T and Sprint that the merged company will have an incentive to engage in a "price squeeze", which would charge higher prices to its long distance rivals for switched access than it charges to its own interexchange affiliate. They note that the FCC has repeatedly rejected the "price squeeze" argument in merger proceedings. They noted that the FCC concluded that price discrimination is relatively easy to detect and, therefore, is unlikely to occur. Applicants also argue that Sprint and AT&T have failed to explain why, if their theory is correct, GTE is not already engaging in a price squeeze in Illinois. In any event, they assert that this merger proceeding is not the proper forum to address the proper price for access charges. (*Id*. at 45)

Applicants disagree with AT&T's contention that the proposed merger will allow Applicants to engage in "monopoly leveraging," whereby the merged company will take advantage of Bell Atlantic's service to captive large business customers in Bell Atlantic's service territory by providing service to such customers in markets such as Chicago. Applicants assert that the monopoly leveraging argument is based on the flawed premise that Bell Atlantic has a monopoly stranglehold on business customers within its service territories. Applicants state that Bell Atlantic's business customers are not captive and that Bell Atlantic's service territory is open to competition. They note that Bell Atlantic has entered into 753 interconnection agreements as of March 1, 1999, 531 of which have been approved, and that Bell Atlantic estimated that 1.45 million access lines in its service territories were served by competitors. They assert that the vast majority of large business customers can choose service from a large number of competitors. They also argue that GTE's service territory has been open to competition for some time. Applicants assert that AT&T's real concern is that the merged company will be a better and stronger competitor in Ameritech's Chicago market than either Bell Atlantic or GTE would be without the merger. (Applicants' Initial Brief at 48-52)

4. Staff's Position

Staff indicates that the Commission has jurisdiction over all telecommunications services in Illinois, including cellular services, although to a more limited extent. Staff analyzed the effect of the proposed merger on competition in the following markets: (1) local exchange, (2) intraLATA , (3) interLATA, (4) cellular; and (5) bundled services that include local telephone access. Staff states that the following characteristics establish the degree of competition in a market: (1) the number of buyers and sellers, (2) the standardization of the product; (3) the degree of ease to enter and exit; and (4) the amount of knowledge about the nature and prices of products. (Staff Initial Brief at 33-36)

Staff concludes that GTE's local exchange markets are not competitive, citing the lack of competitors and barriers to entry. Staff indicates that GTE, compared to other large ILECs, is one of the slowest to implement the requirements of Section 251 of the federal Telecommunications Act and establish wholesale service and unbundled network element ("UNE") tariffs. Staff states that there is no evidence that the merger will enhance GTE's incentive to slow the entry of competitors into its local exchange markets, and that it is not certain that the merger is likely to increase barriers to entry. To promote competition in the local exchange market, Staff recommended that the following conditions be imposed: (1) GTE must file its arbitrated agreement with AT&T, (2) GTE must continue to work with the Commission to reach final approved wholesale service rates; (3) GTE must continue to work with the Commission to reach final approved unbundled network element ("UNE"), interconnection, transport and termination rates; (4) GTE must agree to provide common transport to competing carriers; and (5) GTE must provide an operational support system ("OSS"). (*Id*. at 37)

Applicants have agreed to the first three conditions. Staff notes that the arbitrated agreement between GTE and AT&T was filed with the Commission on May 24, 1999. With regard to the second condition, Staff states that GTE continues to wait for an order in the wholesale rate docket. Staff indicates that GTE agreed to refile its UNE case and adopt interim rates for UNEs. (*Id*. at 38)

Staff defined common transport as the part of GTE's interoffice network that is used to transport telecommunications traffic between one end office switch and another end office switch; between an end office switch and a tandem switch; and between tandem switches. Staff states that such traffic includes cellular, interexchange and local. Staff indicates that there are only a few actual competitors in GTE's local exchange markets. Staff contends that the level of competition would increase if common transport were provided since competitors could then acquire transport facilities comparable to GTE's at an appropriate charge. Therefore, Staff recommends, as a condition of merger approval, that GTE agree to provide common transport. Staff indicated that in the SBC/Ameritech merger case (Docket No. 98-0555), SBC and Ameritech committed to provide common transport. (*Id.* at 40-42)

In response, Applicants contend that Staff's condition regarding common transport should be rejected since it is irrelevant to this merger proceeding. Applicants indicate that Staff is proposing this condition because Staff believes that GTE's current service offering is inadequate. Applicants state that Staff's concern would apply regardless of whether the merger is consummated. Therefore, Applicants conclude that the condition does not meet the requirements of Section 7-204(f) of the Act. Moreover, Applicants indicate that GTE currently offers common transport to competitors in Illinois under the terms of its interconnection agreements. Applicants note that the recently filed GTE/AT&T interconnection agreement defines common transport, includes it as an unbundled element, and delineates GTE's obligations in providing it. (Applicants' Reply Brief at 24-25)

With regard to OSS, Staff raised concerns about the adequacy of GTE's OSS system and noted that GTE's OSS systems have undergone less regulatory scrutiny than those of Bell Atlantic. To ensure that GTE provides an adequate OSS system, Staff initially recommended that the Commission require, as a condition of merger approval, that the merged company implement an independently approved OSS system within 18 months of merger consummation. (Staff Initial Brief at 42-43)

In response to this recommended condition, Applicants presented a comprehensive OSS proposal that provided specific performance measurements along with penalties for missing the measurements. The OSS proposal was offered as an alternative to an independent third party audit of GTE's OSS systems. Staff indicated that the OSS proposal is an acceptable alternative so long as the following three conditions are imposed. First, the Applicants musts be held to their commitment to enter into a collaborative process with the Commission, Staff, and CLECs to tailor the proposed plan to Illinois' specific needs. Second, the collaborative process leading up to implementation of Applicants' OSS proposal must be completed within six months of merger closure. Finally, an appropriate dispute resolution mechanism (i.e. arbitration) must be put in place for OSS determination, including Commission authority to effectively enforce its ensuing decisions. (Staff Initial Brief at 43-44) Applicants agreed to these conditions.

With regard to the intraLATA toll market, Staff concludes that the proposed merger will not have a significant adverse effect on competition. (*Id.* at 38)

With regard to the interLATA market, Staff notes that Bell Atlantic has 300 interLATA toll customers in Illinois, and that GTE offers interLATA toll service through its affiliate to 130,000 customers in Illinois. Staff notes that the interLATA toll market is highly concentrated and concludes that the merger should not increase that concentration by any substantial degree. (*Id.* at 38)

With regard to cellular service, Staff states that Applicants will have to resolve conflicts in overlapping cellular properties in order to comply with federal laws. To alleviate its concerns as to how cellular customers will be treated after the merger, Staff proposed the following conditions: (1) Applicants must notify the Commission of the cellular affiliate that will be maintained as well as the identity of the purchaser of the divested affiliate; (2) Applicants must send a notice to their respective cellular customers 30 days prior to the sale of the divested affiliate; (3) the notice must inform cellular customers of the merger between the two companies, the pending sale of affiliate D and the identity of the divested affiliate purchaser; and (4) Applicants shall provide a copy of their respective notices to Staff for review and comment at least 15 days prior to the date on which the notices will need to be finalized for mailing to cellular customers. Applicants shall provide their customers with the notice incorporating Staff's comments. Applicants agreed to the four conditions. (Id. at 39-40)

Staff indicates that the bundled service market will be affected by the merger only if the FCC determines that Illinois is an in-region state for Bell Atlantic. Staff states that if Illinois were considered to be in-region, GTE would have to stop providing long distance until it demonstrated its compliance with Section 271 of the Telecommunications Act of 1996. Based on the language in Section 271 and FCC orders, Staff concludes that the ultimate determination as to whether Illinois will be an in-region state following the merger rests with the FCC. Staff recommends that the Commission follow the FCC's ruling. (*Id.* at 40)

5. Commission's Conclusion

AT&T argued that the task of applying the Merger Guidelines under the Clayton Act should be left to the DOJ. However, the Commission's analysis will consider, but not rely solely on, the Guidelines in its conclusion.

In contending that the proposed merger does not meet the requirement of Section 7-204(b)(6), AT&T and Sprint argue that the merger has a significant adverse effect on competition in the local exchange market in Illinois since it would eliminate Bell Atlantic as a potential competitor. They contend that Bell Atlantic has the incentive and necessary assets to be a significant player in that market.

Based on the evidence in the record, the Commission cannot conclude that Bell Atlantic would enter the Illinois local exchange market in the near future absent the merger. Applicants witness Bellamy, the President and Chief Executive Officer of Bell Atlantic-Maryland, testified that absent the merger, Bell Atlantic had no plans to enter such market. As to the Illinois service territories of GTE North and GTE South, Ms. Bellamy testified that they would not be part of profitable market entry strategy due to their lack of concentrations of business or residential customers. With regard to the Chicago market, she emphasized its geographical separation from Bell Atlantic's service territory and Bell Atlantic's present lack of marketing presence, facilities and operations support in that market.

Rather, the evidence indicates that the merger would have a positive effect on competition in the Chicago local exchange market. Bell Atlantic has customer relationships with large companies headquartered in Bell Atlantic's service territory that have offices in the Chicago area. Applicants intend to rely on these relationships, along with GTE's existing operational platform and presence in Illinois, to compete against Ameritech for customers in the Chicago market. As a condition to merger approval, Applicants have agreed to aggressively compete to provide service to Chicago's residential, small and medium business customers without diminishing service to GTE's current customers.

The Commission next turns to the claim by AT&T and Sprint that the merger is anti-competitive because the merged company would have an incentive to engage in a "price squeeze" by charging higher prices to long distance rivals for switched access than it charges to its interexchange affiliates. The Commission concludes that this claim is speculative. If there were such an incentive, it would exist regardless of the merger. Additionally, there has been no showing that such discriminatory behavior could not be detected and remedied.

Likewise, the Commission rejects, as bases for denying the merger, the arguments of Sprint and AT&T that the merged company would have an increased incentive and ability to engage in anti-competitive conduct as a result of internalization of "spillover effects," and "monopoly leveraging" that bundles competitive services with monopoly services offered within the expanded "incumbent footprint." Such arguments are speculative. Sprint and AT&T have not presented credible evidence that the merger would lead to unlawful discrimination.

Sprint and AT&T note that the merger would reduce the benchmarks available to judge whether the large ILECs are engaging in anti-competitive behavior. The Commission concludes that such a reduction in benchmarks is no basis for finding that the merger would have a significant adverse effect on competition.

The Commission also concludes that three of the four merger conditions proposed by AT&T should be rejected. The first condition is linked to AT&T's monopoly leveraging argument that has previously been rejected as a basis for denying the merger. The second condition would prohibit Applicants from forming "phony" CLEC-affiliates to compete with themselves within their ILEC service territory. The Commission has no legal authority to prevent an ILEC from competing through an affiliated CLEC. The third condition, which would require that GTE reduce its access charges by $46 million, is beyond the scope of this merger proceeding.

The Commission finally concludes that the fourth condition proposed by AT&T and refined by Sprint in its Brief on Exceptions has some merit. To that end, the Commission will adopt, as conditions of merger approval, portions of Interconnection Conditions A and C adopted in Docket No. 98-0555. Condition A requires GTE North and GTE South to provide to CLECs in Illinois those services, facilities or interconnection agreements/arrangements offered by Bell Atlantic ILEC affiliates in their in-region states, subject to certain exceptions and conditions set out more fully in Section VI of this Order. The Commission finds this condition to be valuable to CLECs and the expansion of the competitive market in Illinois, particularly since Section 252(i) of TA 96 does not contemplate automatic adoption of one state's approval of an interconnection agreement in other states. This is especially so where GTE North and South are not a "parties" to interconnection agreements in other Bell Atlantic states. Condition C requires Joint Applicants to provide specific information relating to all interconnection agreements from other states to the Commission, prior to the merger closing date. This condition will make information available that may be useful to the Commission and its Staff to monitor Joint Applicants' continued compliance with the condition of offering agreements from other states in Illinois.

The Commission agrees with Staff that there is little competition in the Illinois local exchange service territories of GTE North and GTE South. To promote competition in these local exchange markets, Staff proposed five conditions to merger approval. Staff's conditions pertaining to the arbitrated agreement between GTE and AT&T, wholesale service rates, and UNE, interconnection, transport and termination rates have been agreed to by Applicants or satisfied by Applicant's commitments. With regard to OSS systems, Staff indicated that Applicants' OSS proposal, which was an alternative to Staff's recommended independent third party audit, was acceptable so long as additional conditions, including a collaborative process to tailor the proposed plan to Illinois' specific needs, were agreed to by Applicants. Applicants agreed to Staff's conditions. The Commission finds that Applicants alternative OSS proposal, with the addition of Staff's conditions, is reasonable and is approved.

We accept Staff's rationale for the need to address common transport in this case and believe that it is critical to fostering competitive telecommunications markets in Illinois. (Gasparin, Staff Exhibit 9.0 at 3-7; Staff Reply Brief at 12) Although the evidence shows that GTE provides for common transport in some of its interconnection agreements, we conclude that the terms of these provisions are too vague and ambiguous. (Gasparin, *Id*.) Within 60 days of merger closing or final regulatory approval, whichever is earlier, we require that Bell Atlantic/GTE work with Staff to develop a more thorough definition of common transport and file a tariff describing the element.

Applicants have also agreed to Staff's conditions pertaining to cellular service. Those conditions are adopted by the Commission.

With the conditions approved herein, the Commission concludes that the proposed reorganization is not likely to have a significant adverse effect on competition in those markets over which the Commission has jurisdiction.

F. Whether the proposed reorganization is not likely to result in any adverse rate impacts on retail customers. Section 7-204(b)(7)

1. Applicants' Position

Applicants assert that there is no evidence that the proposed merger will necessitate rate increases to GTE North or GTE South's retail services. Therefore, Applicants state that the merger meets the requirements of Section 7-204(b)(7) because it is not likely to result in any adverse rate impacts on retail customers. (Applicants' Initial Brief at 55)

As evidence that the proposed merger meets the standards of Section 7-204(b)(7), Applicants point out that they have not proposed any rate increases in their merger application. Applicants emphasize that they have made the following commitments in response to Staff's concerns relative to §7-204(b)(7):

- GTE will reduce rates by $10.03 million upon merger consummation to account for earnings and merger savings. The rate reduction will be achieved by reducing IntraLATA toll rates by $1.68 million, residential and business local usage rates by $6.6 million and access charges by $1.74 million (Applicants' Initial Brief at 56; Reply Brief at 26; and Applicants Ex. 6.3 at 15)

- GTE will not apply to increase local residential and business service rates as well as local usage rates for non-competitive residential and business accounts, except for any Commission ordered USF modifications, in the period between merger approval and filing of a general rate case in the third year after merger closure. (Applicants' Initial Brief at 56)

- GTE will file for a general rate case approximately three years after merger closure, allowing the Commission the opportunity to fully allocate actual, realized merger costs and savings. (Applicants' Initial Brief at 57; Reply Brief at 26)

- GTE will withdraw its rate rebalancing case (Docket No. 98-0606) within 30 days of merger closure. (Applicants' Initial Brief at 9)

Applicants maintain that these commitments completely satisfy the requirements of Section 7-204(b)(7).

2. Staff's Position

Staff applied two standards to analyze the requirement of Section 7-204(b)(7). First, Applicants must prove that the proposed merger will not likely necessitate rate increases for GTE's retail services. Second, Applicants must prove that the proposed merger will not likely have an adverse impact on the price-to cost relationship of GTE's services currently priced above cost. (Staff Ex. 1.00 at 14)

Staff explained why the second standard is necessary. Staff indicates that GTE is expecting to realize merger-related expense savings through decreased shared and common costs in categories such as advertising, customer service and research and development. Staff notes that GTE is also expecting merger-related procurement savings due to volume discounts and reductions in inventories. Staff states that these merger-related savings will result in incremental cost savings that, in turn, decrease the long-run service incremental costs ("LRSICs") for its services. Staff indicates that the price-to-cost relationship of the associated services will be negatively impacted if GTE's costs decrease while its rates remain unchanged or increase, thereby causing adverse rate impacts on retail customers. (Staff Initial Brief at 45)

Staff initially indicated that adoption of the following conditions is necessary to satisfy its two standards:

- filing of annual TELRIC, shared and common cost studies that reflect Commission-approved merger-related cost and savings;
- setting up tracking mechanisms to track and record, by USOA, any costs, savings and revenue enhancements resulting from the merger;
- sharing of merger synergies with GTE Illinois customers using actual annual results;
- filing of a general rate case within six months of merger consummation;
- capping GTE's rates from the time of merger approval until the conclusion of the general rate case;
- imputing of yellow page revenues into synergies to be shared with customers;
- sharing revenue synergies with Illinois customers;
- provision of refunds to competitive carriers; and
- provision of access charge reductions to interexchange carriers and credits to end users reflecting remaining net savings not allocated to competitive carriers.

(Staff Initial Brief at 46)

In its rebuttal testimony, Staff provided an alternative, including an immediate rate reduction, which would obviate the need to impose Staff's conditions. (Staff Ex. 1.01 at 14) Staff indicates that GTE accepted Staff's alternative and made several commitments. Staff states that its first standard is satisfied by GTE's commitment to (1) not increase local residential and business rates as well as local usage rates for non-competitive residential and business accounts, except as required for Commission ordered USF modifications, during the period between merger approval and the filing of general rate case three years after merger closure; and (2) withdraw the rate rebalancing case (Docket No. 98-0606), thereby eliminating any potential price increases that could have resulted from that docket. (Staff Initial Brief at 46-47)

Staff concludes that Applicants have satisfied Staff's second standard by committing to a rate reduction of approximately $10.03 million upon merger consummation, and the filing of a general rate case approximately three years after merger closure. Staff indicates that the rate reduction of $10.03 million sufficiently addresses its concerns that GTE is over-earning, alleviates the need for a rate case within six months of merger consummation, and provides initial savings to GTE's customers that will occur during the first two years after merger consummation. Staff indicates that subsequent merger savings can be addressed in the general rate case. (*Id.* at 47-48)

Staff and Applicants agree that the allocation of merger-related savings should be based on actual savings. Staff indicates that actual savings will not be apparent until after the second post-merger year. Staff states that in the general rate case that GTE committed to file, GTE would be required to provide revised total element long-run incremental cost ("TELRIC") and shared and common cost studies that reflect actual merger-related savings. Staff indicates that if the data provided by GTE is appropriate, GTE's rates could then be adjusted downward in a manner that does not negatively affect the price-to-cost relationship of its services. Staff concludes that the Commission could establish rates in the general rate case that are based on actual merger-related savings. (*Id.* at 48)

Staff states that Applicants question the validity of considering the price-to cost relationship when analyzing adverse rate impacts under Section 7-204(b)(7). Staff asserts that its second standard is necessary to ensure that GTE does not use the merger as a vehicle to increase the mark-up applied to its retail services, thereby causing customers to be worse off. Staff recommends that the Commission find in this docket that the price-to cost relationship should be utilized in analyzing adverse impacts on customers under Section 7-204(b)(7). Staff further recommends that the Commission determine that the general rate case to be filed by GTE is an appropriate forum to review the price-to cost relationship of GTE's services. (*Id.* at 49)

3. Applicants' Response

Applicants disagree with Staff's position that Section 7-204(b)(7) requires an analysis of the price-to-cost relationship of GTE's rates. Applicants contend that the Commission need not rule on this issue in this docket since Applicants and Staff agree that the subsequent general rate case is the appropriate forum to review the price-to-cost relationship. (Applicants' Reply Brief at 26)

4. Commission's Conclusion

The Commission finds that the proposed merger is not likely to result in any adverse rate impacts on GTE's retail customers. We are convinced that Applicants, through the evidence presented and the commitments they have made, have provided appropriate assurance against adverse rate impacts as a result of the merger. Applicants' agreement to initially reduce rates upon merger closure by approximately $10.03 million has the effect of reducing rates as a result of the merger. In addition, their agreement to cap rates pending the future general rate case assures that GTE's customers will not be subject to rate increases during merger integration. The rate case in the third year following merger closure will provide a forum for a thorough examination of GTE's rates once merger savings and costs are incurred. To ensure that GTE abides by its commitments described in Section V.F.1. above, the Commission adopts those commitments as conditions to merger approval under Section 7-204(f) of the Act.

The Commission declines Staff's request that it conclude that the price-to cost relationship should be utilized in the analysis of adverse rate impacts under Section 7-204(b)(7). We agree with Staff and Applicants that for a rate of return regulated utility, issues concerning the price-to-cost relationship of the utility's services are most properly reviewed in the context of a general rate case. Applicants' commitment to make an initial rate reduction, followed by a future comprehensive review of all of GTE's prices in a rate proceeding, makes it unnecessary for the Commission to decide, whether Section 7-204(b)(7) invariably requires an analysis of the utility's price-to-cost relationship.

G. Rulings Required by Section 7-204(c)

1. Overview

Section 7-204 (c) of the Act provides:

> The Commission shall not approve a reorganization without ruling on: (I) the allocation of any savings resulting from the proposed reorganization; and (ii) whether the companies should be allowed to recover any costs incurred in accomplishing the proposed reorganization and if so, the amount of costs eligible for recovery and how the costs will be allocated.

The parties have taken various positions on the interpretation to be given this statute. Being a relatively new enactment, there is no controlling precedent. The issues, as set forth by the parties, may be summarized as follows. First, whether GTE's commitment to put into a place a $10.3 million rate reduction, freeze rates and begin and complete the three phase plan, which includes the filing of a rate case in three years is enough to satisfy the dictates of the statute. Second, if the commitment is not sufficient, whether any or all costs savings should be passed through to end users. Third, if the commitment is not sufficient, whether any or all costs of the merger are recoverable from ratepayers. The final issue is, in the event the commitment is not sufficient and the costs are recoverable from ratepayers, what those costs are and manner in which they should be allocated.

2. Applicants' Position

Applicants contend that all issues related to §7-204(c) have been resolved. Applicants state that their commitments to make a rate reduction at merger closure, cap rates, and execute their proposed "Three Phase Plan," including the filing of a general rate case in the third year after merger closure, provide the acceptable methodology for allocation of merger savings and costs, required by §7-204(c). (Applicants Initial Brief at 6-7)

Applicants estimate that the merged company as a whole will realize $2 billion in expense savings three years after the merger. Applicants also estimate that the merger transaction costs and merger implementation costs will total $1.8 billion. Applicants' witnesses Shuell and Shore testified that once merger costs are netted against merger savings, and after net savings are properly allocated to intrastate regulated ILEC operations, the cumulative net savings for GTE North and GTE South are expected to be $7.7 million by year three after the merger. (Applicants' Initial Brief at 7)

As noted previously, Applicants have committed, as a condition of merger approval, to make an immediate $10.03 million rate reduction to address both cumulative savings in the first two year after the merger and to address Staff's concerns about GTE's current earnings. (Applicants Initial Brief at 8)

In pre-filed testimony and during hearings, GTE proposed a rate design to achieve the $10.03 million rate reduction. Following merger approval, GTE will reduce IntraLATA toll rates $1.68 million, residential and business local usage rates $6.6 million, and non-cost based access charges $1.74 million. (Applicants' Initial Brief at 10)

The "Three Phase Plan" was proposed to allow the Commission to rely on actual financial results as much as possible in order to avoid the inaccuracies that would occur if estimates were the sole basis for savings allocation. (Applicants' Initial Brief at 8-9) The phases of the plan are as follow:

Phase I: Applicants commit to withdraw the rate rebalancing case (Docket No. 98-0606) within thirty (30) days of merger closure. GTE also commits to mirroring interstate access rates and to operate under GTE's current directory contracts pending the general rate case as described in Phase III, below. GTE also commits to offer interim UNE rates as filed in Docket No. 96-AB-005 on a nondiscriminatory basis to other parties as part of interconnection negotiations with those parties. (Applicants' Initial Brief at 9)

Phase II: GTE commits to refile its UNE case with updated LRSICs within six months of merger closure. GTE also commits to use the Integrated Cost Model (ICM) in the UNE case to allow the Commission to test the model within that docket. GTE also states that it will apply to the Commission for revised depreciation rates at the same time it refiles the UNE case, if revised depreciation rates are appropriate. (*Id*.)

Phase III: GTE commits to file, within a reasonable time period after an order is issued in the UNE and depreciation cases, but in no event more than three years after merger approval, a general rate case that will address, among other issues, merger costs and savings. (*Id.*)

Applicants take the position that the proposed general rate case in the third year after the merger closes provides a forum to examine and litigate all other issues related to allocation of merger savings, including competitive vs. non-competitive savings allocations and allocation factors. (*Id.* at 10) Applicants also point out that the proposed rate case will allow the Commission to review and rule on allowable costs during the general rate case, once actual costs are known. Applicants assert that the proposed rate reduction, rate cap and Plan will allow customers to benefit directly from merger savings immediately while providing an appropriate process to ensure appropriate merger related benefits in the future. (*Id*. at 11)

3. Staff's Position

Staff contends that the Commission must interpret 7-204(c) to require two separate rulings. The Commission must address the allocation of merger-related savings and the Commission must address whether merger-related costs should be recovered from the merged entity's customers. (Staff Initial Brief at 50)

Staff asserts that all savings properly allocated to GTE North and GTE South should flow to GTE's Illinois ratepayers. Staff agrees that Applicants' commitment to reduce rates $10.03 million at merger closure is a just and reasonable allocation of initial merger savings and a mechanism to address GTE's earnings situation. Staff also agrees that GTE's commitment to file a general rate case in the third year after merger consummation satisfies Staff's concerns for sharing of merger savings, revenue synergies, and the tracking of merger related savings. (*Id.* at 51-52)

Regarding merger costs, Staff disagrees with Applicants' position that they should be allowed to recover all merger related costs from GTE North and GTE South customers. (*Id.* at 52) Staff takes the position that one-time merger costs should be borne by GTE shareholders, not offset against merger savings. (*Id.* at 52) Staff contends that to the extent the Commission allows GTE to recover merger costs from GTE North and GTE South customers, recoverable costs should be limited to regulated telecommunications operations allocable to GTE North and GTE South. (*Id.* at 53) Staff also takes the position that the Commission should not allow the netting of merger costs and savings. (*Id.* at 54)

Staff agrees with Applicants that Applicants' commitment to file a general rate case within three years of merger consummation will allow a review of actual revenues and expenses. (Staff Initial brief at 56) Because the rate case will also allow a review of all of GTE's regulated revenues, Staff's concerns related to sharing of revenue enhancements are also satisfied. (Staff Initial Brief at 58)

4. Intervenors' Position

AT&T supports GTE passing on merger savings to its customers. AT&T, however, characterizes GTE's proposed reduction of $10.03 million as "token." AT&T noted that AT&T witness Conway testified that GTE is grossly overcharging by many times this amount ($46.8 million) on its intrastate switched access services alone. AT&T argued that GTE's rate reduction proposal to reduce access by only $1.7 million does not meet the standards of Section 7-204(c). (AT&T Reply Brief at 3)

AT&T instead urges the Commission to: (1) order an immediate reduction in intrastate access rates here of $46.8 million, and (2) allow for further rate reductions to be ordered in Docket No. 98-0606 on the current schedule. (AT&T Reply Brief at 5) Sprint did not take a position on this issue.

5. Commission's Conclusion

While Applicants and Staff have apparently agreed that GTE's commitment to reduce and cap rates followed by a number of filings at the Commission satisfy the requirements of section 7-204(c), the Commission is unconvinced. A plain reading of the statute reveals that it imposes an affirmative duty upon the Commission and requires that we rule on cost and savings issues when we approve a reorganization, not at some later date. Our reading of the statute also leads us to conclude that it is not incumbent upon us to pass on the exact amount of costs or savings, but that we must rule on the issues of sharing and recovery. To that end, we approve GTE's commitment to reduce and cap rates, and follow through with the three phase plan. Because the plan includes the filing of a general rate case, we will establish the amounts of costs and savings at that time. The manner in which those costs and savings will figure into the revenue requirement at the time of the rate case will be determined here.

The first issue to be determined is whether the savings that are expected to be realized following the merger should include revenue enhancements as argued by Staff. Looking to the particulars of Section 7-204(c), the plain language of the statue leads us to construe “savings” as that term is ordinarily understood, namely, a reduction in costs or expenses. We agree with the Applicants that the term “savings” in Section 7-204(c)(i) refers to an actual reduction in costs or expenses. Hence, the urgings of Staff that we widen the pool to include “revenue enhancements” are rejected.

The next issue to be determined is whether the costs that may be recovered should include costs incurred solely as a result of the merger and unrelated to the Applicants provision of service. As for the meaning of “costs,” the Commission finds that, while the statute, on its face seem to contemplate the possibility of collecting costs incurred solely as a result of the merger, it also grants the Commission discretion to find that such costs should not be recovered. The Commission agrees with Staff that none of the one-time merger costs relating to the merger, such as banker or brokerage fees, legal fees, or accounting fees, constitute legitimate costs for present purposes. Because the merger is being done based upon the approval of the company’s stockholders, it is the stockholders that should pay for the business end of the deal, not ratepayers. Ratepayer should however, be expected to share in those costs directly associated with the merged companies’ provision of service through the operation of section 7-204(c). Hence, we agree with Staff’s position and conclude that, in the rate case to be filed within three years of merger approval, the merged company should recover only those costs directly associated with the utility’s operations.

The next issue to be determined is whether recoverable costs and savings should be netted for purposes of establishing the merged entity’s revenue requirement in the upcoming rate case. While Section 7-204(c) apparently grants us the discretion to order that savings be reflected and operational costs ignored, we decline to do so, despite Staff’s position opposing the netting of savings and costs. To the extent that costs are incurred to produce savings and are shown to be both reasonable and directly related, netting is appropriate. As a matter of logic, the only savings that can be realized are net savings. Moreover, our reading of Section 7-204(c) indicates that just such a result is contemplated. We further conclude that 50% of the net merger savings allocable to the merged companies' jurisdictional operations should be allocated to Illinois consumers. Given the fact that the parties had apparently concluded that an agreement had been reached in satisfaction of section 7-204(c), there is not a record upon which we may base a more complete conclusion on the manner in which net costs and savings are to be allocated across various customer groups. This issue will be addressed more fully in the rate case.

In terms of AT&T’s recommendations, the Commission declines to order a reduction in access charges in this docket. While we have determined that merger savings should inure to the benefit of ratepayers, a reduction in access rates would not necessarily benefit ratepayers unless the IXC and other consumers of access would commit to pass the reductions along to their customers. While AT&T has requested a reduction in access charges in an amount exceeding $45 million, it has not committed to passing this reduction along to consumers on a dollar for dollar basis. Additionally, the Commission finds no reason for the rate rebalancing docket to proceed further since the cost characteristics of the jurisdictional entity are likely to be much different than the cost characteristics of GTE North and South as they exist today. To that end we approve of GTE's commitment to reduce rates $10.03 million, cap rates and begin and complete the three-phase plan.

VI. CONDITIONS TO MERGER APPROVAL

Section 7-204 of the Act provides that "(i)n approving any reorganization pursuant to this Section, the Commission may impose such terms, conditions or requirements as, in its judgment, are necessary to protect the interests of the public utility or its customers. All of the conditions proposed by Staff and Intervenors have been discussed in Section V above.

The Commission concludes that conditions to our approval are needed to protect the interests of GTE or its customers. Many of the conditions are the result of commitments made by Applicants during the course of this proceeding. The Commission concludes that Applicants shall comply with all of the following conditions to approval of the proposed reorganization:

(1) BA/GTE must make a rate reduction of $10.03 million at merger closure to address earnings issues and immediate merger savings. The rate reduction shall be achieved by reducing IntraLATA toll rates by $1.68 million; residential and business local usage rates by $6.6 million, and non-cost based access charges by $1.74 million.

(2) BA/GTE shall participate in a collaborative process with the Commission and CLECS to tailor GTE's proposed OSS measurement, reporting and incentive plan, as described in the record, to Illinois needs. The collaborative process must also result in a recommended dispute resolution methodology, including Commission enforcement policies. The collaborative process should commence within 30 days of merger closure and should be completed within 6 months of commencement.

(3) GTE shall withdraw its rate rebalancing case (Docket No. 98-0606) within 30 days of merger closure.

(4) GTE shall mirror interstate access rates pending the general rate case as described in (7) below.

(5) GTE shall operate under the terms of the current Yellow pages directory contract pending the general rate case as described in (7) below.

(6) GTE shall offer interim UNE rates as approved in its interconnection agreement with AT&T on a nondiscriminatory basis to other parties as part of interconnection negotiations with such parties, pending issuance of an order in GTE's UNE case.

(7) GTE shall file for a general rate case within a reasonable time after the Commission issues orders in GTE's UNE and depreciation cases (if a depreciation case is filed), and in no case any later than the third year after the merger closes.

(8) GTE shall not seek a rate increase in local residential and business service rates as well as local usage rates for non-competitive residential and business accounts, except for any Commission ordered USF modifications, in the period between merger approval and the filing of the general rate case as described in (7) above.

(9) BA/GTE must provide access to all books, accounts, records, and personnel of Bell Atlantic, GTE, and all their utility and non-utility affiliated parent, sister and subsidiary companies, as well as independent auditors' work papers; as requested by the Commission.

(10) BA/GTE must file a copy of its revised post-merger FCC CAM with the Commission concurrent with filing the same at the FCC. The reorganized company must file the post-merger revised Illinois CAM with the Commission within sixty (60) days thereafter.

(11) Any rate increase BA/GTE requests specifically for 9-1-1 network and services shall be submitted to normal Commission review of proposed increases.

(12) BA/GTE must advise Commission Staff prior to the reduction or removal of any subject matter experts, including 9-1-1 staff, outside of Illinois.

(13) BA/GTE must obtain Commission approval before implementing operational changes to GTE's current 9-1-1 system attributable or in connection with the proposed merger, including, but not limited to changes in policies, processes and procedures associated with 9-1-1 billing systems and databases.

(14) Any operational changes to the 9-1-1 system made by BA/GTE must be transparent to both the 9-1-1 system and its subscribers.

(15) BA/GTE must submit to the Commission a list of their "best practices" within six (6) months of the consummation of the merger and each six months thereafter for three years.

(16) BA/GTE shall maintain an office(s) in Illinois, with a level of staff necessary to ensure compliance with all Commission rules, statues and orders.

(17) GTE shall be required to comply with and offer all terms and conditions in each of GTE's interconnection agreements to any qualified taker for the full length of the agreements. The merged entity is prohibited from interfering with the assumption of an entire interconnection agreement that has been approved by the Commission.

(18) GTE shall provide interconnection in accordance with the following conditions for an indefinite time in Illinois. GTE shall provide to CLECs in Illinois those services, facilities or interconnection agreements/arrangements offered by Bell Atlantic ILEC affiliates in their in-region states subject to the following exceptions and conditions

- Bell Atlantic and/or any Bell Atlantic affiliate in Illinois shall not be required to offer to CLECs in Illinois UNEs, services, facilities or interconnection agreements/ arrangements which have been imposed upon Bell Atlantic by another state as a result of an arbitration (as opposed to a voluntary agreement);

- Bell Atlantic, through its subsidiaries, GTE North and GTE South, shall be required to offer to CLECs in Illinois UNEs, services, facilities or interconnection agreements/arrangements, unless it demonstrates by a preponderance of the evidence that they are technically infeasible or unlawful or contrary to Illinois policy;

- Bell Atlantic, through its subsidiaries, GTE North and GTE South shall not be required to offer to CLECs in Illinois UNEs, services, facilities or interconnection agreements/ arrangements at the same rates or prices as Bell Atlantic makes such offerings in Bell Atlantic in-region territories on a permanent basis since costs may and do vary by state, and pricing in each state reflects state pricing policies and costs. However, Joint Applicants shall not be permitted to delay implementation of any interconnection provision on the basis of pricing. Accordingly, the Commission further orders the Joint Applicants to import the rates agreed to in the relevant state in which the imported interconnection agreement was originally reached, until such time as Illinois-specific rates can be determined. At such time, the interim rates would be subject to a true-up;

(19) Joint Applicants shall provide the following information regarding all interconnection agreements from other states to the Commission prior to the merger closing date:

1. all agreements listed by state;

2. docket number associated with each agreement;

3. date of approval

4. parties to the agreement;

5. where the agreement can be obtained, including a contact;

6. telephone number and a relevant internet address; and

Such condition, excepting the requirement of timing, will also include any subsequent interconnection agreements entered into by a Bell Atlantic ILEC affiliate after the date of the merger closing, as well as agreements entered into by a Bell Atlantic CLEC competing out of region. For interconnection agreements entered into after the date of the merger closing (in region or out of region), Bell Atlantic should provide the relevant information referenced above regarding such interconnection agreements to the Commission within 15 days of entering into such agreements. The Joint Applicants will make such agreements available for inspection to any requesting Illinois CLEC, either electronically or in a hard copy format.

(20) GTE shall continue to work with the Commission to reach final, Commission approved, wholesale service rates.

(21) GTE shall continue to work with the Commission to reach final, Commission approved, unbundled network element, interconnection, transport and termination rates.

(22) GTE shall file a UNE case with updated LRSICs within six months of merger closure.

(23) GTE and Bell Atlantic shall notify the Commission of the cellular affiliate that will be maintained as well as the identity of the purchaser of the divested affiliate.

(24) GTE and Bell Atlantic shall send a notice to their respective cellular customer's thirty (30) days prior to the sale of the divested affiliate. The notice shall inform cellular customers of the merger between the two companies, the pending sale of affiliate D and the identity of the divested affiliate purchaser.

(25) GTE and Bell Atlantic shall provide a copy of their respective notices to Staff for review and comment at least fifteen (15) days prior to the date on which notices will need to be finalized for mailing to cellular customers. GTE and Bell Atlantic shall provide their customers with the notice incorporating Staff's comments.

(26) BA/GTE shall aggressively compete to provide local service to Chicago's residential, small, and medium business customers, without diminishing service to GTE's current customers while entering Chicago.

(27) GTE shall make an infrastructure investment in Illinois of no less than $270 million for the next three years. GTE shall file annual reports for the three years detailing the manner in which the infrastructure investments have been made and detailing the new services and service improvements made in that period by Applicants in the remaining jurisdictions served by Applicants.

(28) within 60 days of merger closing or final regulatory approval, whichever is earlier, Bell Atlantic/GTE shall work with Staff to develop a more thorough definition of common transport and file a tariff describing the element.

VII. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

(1) GTE North Incorporated is a Wisconsin corporation, authorized under the laws of the State of Illinois to engage in the provision of telecommunications services to the public in the State of Illinois, and is a telecommunications carrier within the meaning of Section 13-202 of the Public Utilities Act;

(2) GTE South Incorporated is a Virginia corporation, authorized under the laws of the State of Illinois to engage in the provision of

telecommunications services to the public in the State of Illinois, and is a telecommunications carrier within the meaning of Section 13-202 of the Public Utilities Act;

(3) Bell Atlantic Corporation is a Delaware corporation offering telecommunications services in 13 states and the District of Columbia;

(4) Applicants request approval of a "reorganization" of Bell Atlantic/GTE that would result from a business combination of GTE and Bell Atlantic: if that business combination is completed, GTE would become a wholly owned subsidiary of Bell Atlantic, and GTE North and GTE South would become second tier subsidiaries of Bell Atlantic;

(5) the Commission has jurisdiction over the parties hereto and the subject matter hereof;

(6) the findings of fact and conclusions of law set forth in the prefatory portion of this Order are supported by the record herein and are hereby adopted as findings of fact and conclusions of law;

(7) the proposed reorganization will not adversely affect the ability of GTE North and GTE South to perform their duties under the Public Utilities Act;

(8) with the adoption of the 28 conditions set forth in Section VI herein, the Applicants will have satisfied the provisions in §7-204(b)(1)-(7), as follows:

   (I) the proposed reorganization will not diminish the ability of GTE North and GTE South to provide adequate, reliable, efficient, safe and least cost service;

   (II) the proposed reorganization will not result in the unjustified subsidization of non-utility activities by GTE North and GTE South or their customers;

   (III) costs and facilities are and will be fairly and reasonably allocated between utility and non-utility activities in such a manner that the Commission can identify those costs and facilities which are properly included by GTE North and GTE South for ratemaking purposes;

   (IV) the proposed reorganization will not significantly impair the ability of GTE North and GTE South to raise necessary capital on reasonable terms or to maintain a reasonable capital structure;

(V) GTE North and GTE South will remain subject to all applicable laws, regulations, rules, decisions and policies governing the regulation of Illinois public utilities;

(VI) the proposed reorganization is not likely to have a significant adverse effect on competition in those markets over which the Commission has jurisdiction; and

(VII) the proposed reorganization is not likely to result in any adverse rate impacts on retail customers;

(9) each of the 28 conditions adopted herein is necessary to satisfy the requirements of §7-204 of the Act;

(10) merger-related costs and savings shall be treated in accordance with the Commission's conclusion in Section V.G.5 of this Order;

(11) any petitions, objections or motions in this proceeding that have not been specifically disposed of should be disposed of in a manner consistent with the Commission's conclusions herein.

IT IS THEREFORE ORDERED, that the proposed reorganization of GTE/Bell Atlantic, as set forth in the verified joint application filed in this proceeding, is approved, subject to the 28 conditions set forth in Section VI of this Order.

IT IS FURTHER ORDERED that any petitions, objections or motions made in this proceeding and not otherwise specifically disposed of herein are hereby disposed of in a manner consistent with the conclusions contained herein.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 29th day of October, 1999.

Chairman